SUPREME COURT
FIRST DIVISION

MAI PHILIPPINES, INC.,
***Petitioner*,**

-versus-

G.R. No. L-73662
June 18, 1987

NATIONAL LABOR RELATIONS COMMISSION, and RODOLFO NOLASCO,
***Respondents*.**
x----------x

D E C I S I O N

NARVASA, *J.*:

In this case, the act of an employer — in professing inability and thus failing to comply with the direction in a final and executory judgment to reinstate an employee held to have been illegally dismissed, and offering instead to give separation pay in accordance with law — was deemed by the National Labor Relations Commission to have given rise to a cause of action entirely distinct from that upon which original judgment had been rendered. What is worse, the Commission not only allowed the filing and prosecution of a subsequent separate action by the employee for the recovery of back wages under the original judgment as well as damages, but also the contemporaneous execution of the original judgment in so far as it required the payment

of those precise back wages. It is perhaps futile to attempt to discover the cause of this grievous procedural anomaly, whether it be ignorance or gross inattention or neglect. But it is certain that the error must be corrected, and the patent injustice thereby caused, rectified. This, this Court will now do.

The Original Decision Requiring Reinstatement

The decision in question was rendered on November 19, 1979, by Regional Director F. Estrella. It declared illegal the dismissal by MAI Philippines, Inc. of its Customer Engineering Manager, Rodolfo Nolasco, and decreed his reinstatement with full back wages.[1] The decision was affirmed by the Labor Minister[2] and in due course became final.

MAI Philippines, Inc. (hereafter simply referred to as MAI) complied with it by paying Nolasco P155,025.00 on December 15, 1981.[3] It however declined to reinstate Nolasco because there was no longer any "substantially equivalent position available."[4] Instead, it offered to give separation pay at the rate of one (1) month for every year of service, an offer it communicated to Nolasco in writing on November 24, 1981.[5]

Separate Suit by Nolasco in Court of First Instance

On January 12, 1982, Nolasco brought suit in the Court of First Instance against MAI to recover damages;[6] but on August 10, 1982, he presented a motion to dismiss his own case, based on lack of jurisdiction, which the Court granted on August 26, 1982.[7]

Second Action in NLRC Arbitration Branch

He then filed on August 16, 1982 a complaint in the Arbitration Branch, NLRC, also grounded like his suit in the Court of First Instance, on MAI's refusal on November 24, 1981 to reinstate him pursuant to Director Estrella's final judgment. In this new complaint, he sought recovery of P539,837.00, representing salaries and pecuniary benefits from December 1, 1981 until May 1987 "when (he) reaches the age of retirement of 65 years;" P600,000.00 as moral damages; P300,000.00 as exemplary damages; and P100,000.00 as

attorney's fees.[8] The case was assigned to Arbiter Conrado O. Lasquite.

It is noteworthy that at the time of the filing of this second complaint on August 16, 1982, Nolasco was already 60 years old, his 60th birth anniversary having fallen sometime in May, 1982.[9]

Arbiter's Adverse Judgment to Nolasco

After appropriate proceedings, Arbiter Lasquite rendered judgment dated August 2, 1984 dismissing the case "for being a duplication of the earlier labor) Case involving the same complainant (Rodolfo Nolasco) and the same respondent (Mai Philippines, Inc.)."[10] The Arbiter rejected as "completely unfounded" Nolasco's claim that "he was dismissed by respondent with malice and deceit on 24 November (1981)" — since in truth he had not yet been reinstated on that day, and had in fact still been ordered reinstated by an alias writ of execution on December 7, 1981, and had "still received his backwages up to 15 December 1981."[11] The Arbiter declared that Nolasco's "appropriate remedy (was) to pursue the enforcement/implementation of the 19 November 1979 Order of Director Estrella (which) is very clear, specific and definitive,"[12] rather than to institute and prosecute a "duplicate case."[13]

Nolasco's Appeal to the NLRC

Notice of the Arbiter's Decision was served on Nolasco's counsel on September 12, 1984.[14] Twelve (12) days later, or on September 24, 1982 the latter filed an "Appeal" — dated September 22, but verified on September 24, 1984[15] — assailing the Arbiter's finding of "duplication" or res judicata and broadly hinting that the Arbiter bad knowingly rendered an unjust judgment.

MAI filed an "OPPOSITION TO APPEAL" in which it contended that: (1) Nolasco's appeal was filed out of time and should on this account be dismissed; (2) the Arbiter's decision was justified by the facts and applicable law and jurisprudence; (3) the appeal is pro forma, being "a mere rehash of the arguments already presented" to the Arbiter; and (4) the fact that Nolasco had in the meanwhile "reached the age

of mandatory retirement (rendered) the order of reinstatement moot and academic."[16]

Contemporaneous Execution of Original (Estrella) Decision

While his appeal from the Lasquite decision was pending before the NLRC, Nolasco filed on January 10, 1985 a motion for an alias writ of execution, to compel payment to him pursuant to the Estrella Decision[17] of "accrued backwages from December 1981 to the present" as well as "his yearly Christmas bonus or 13th month pay for 1981, 1982, 1983, 1984 and 1985," in view of MAI's failure of "compliance to the reinstatement of complainant."[18] Over MAI's objections that *inter alia* the matter was pending appeal, and that reinstatement had been mooted,[19] Director Severo Pucan — who had taken over from Mr. Estrella as Director of the National Capital Region — issued the alias writ prayed for, under date of February 6, 1985.[20] Pursuant thereto, MAI's deposit with the Bank of America was garnished to the extent of P239,850.00.[21]

MAI's Appeals from Order of Execution; Stay Thereof

MAI thereupon filed with Director Pucan's Office a "MOTION TO QUASH AND/OR MOTION FOR RECONSIDERATION" dated February 12, 1985,[22] and with the Ministry of Labor itself, an "OMNIBUS MOTION AND/OR APPEAL" also dated February 12, 1985,[23] seeking the recall of the alias writ and the negation of the garnishment of its funds in the bank. By Order dated March 13, 1985, Director Pucan gave due course to MAI's appeal, ordering the elevation of the record to the Labor Appeals Review Staff, Office of the Minister, and requiring MAI, to stay "execution of the judgment award," "to post a supersedeas bond in the amount of P239,050.00 within ten (10) days."[24]

MAI also presented an "APPEAL" from Director Pucan's aforesaid Order of March 13, 1985 which order, in its view, had impliedly denied its motion to quash the alias writ of execution.[25] This second appeal, like the first, was also given due course by Director Pucan, by Order dated June 7, 1985.[26] Earlier, by letter dated April 2, 1985, Minister Ople instructed Director Pucan "to stay the Alias Writ of

Execution pending final determination of whether the award has already been fully satisfied or not."[27]

Execution of Judgment Without Notice to MAI

Shortly before noon on May 28, 1985, MAI's attorneys were advised by the Bank of America over the telephone that Sheriff Alfonso Balais, Jr. and Nolasco were able to obtain from it and then encash an uncrossed manager's check amounting to P239,850.00, which was the amount set forth in the alias writ of execution dated February 6, 1985.[28]

Some minutes afterwards, the same attorneys received copies of two (2) orders which apparently constituted the authority for the encashment of said check. The first, rendered by Deputy Minister Vicente Leogardo, Jr. on May 27, 1985, dismissed MAI's initial appeal and remanded the case to the National Capital Region for enforcement of the alias writ of execution in question.[29] The second, issued by Director Pucan under date of May 28, 1985, commanded the Bank of America, under threat of contempt, to convert into cash its check made out in the name of Sheriff Balais in the amount of P239,850.00; this, in view of the dismissal of MAI's appeal and the judgment's "having long become final and executory."[30]

MAI's Motion for Reconsideration; Resolution Thereon by Leogardo

On June 3, 1985, MAI filed with the Office of the Labor Minister a MOTION FOR RECONSIDERATION of the Leogardo Order of May 27, 1985,[31] (1) assailing it as "most appalling, nay revolting" in the premises, being contrary to Minister Ople's order (letter) of April 2, 1985 requiring stay of execution,[32] and being unwarranted because of the pendency of MAI's (second) appeal; and (2) deploring, too, the "undue haste and speed" which attended encashment of the check for P239,850.00. MAI also (3) pointed out that in May, 1982, Nolasco reached the compulsory retirement age of 60 years set by the Labor Code; and Nolasco's claim — that under MAI's retirement plans, specifically cited by him, the retirement age is 65 — is wrong, because by the terms of those very same retirement plans invoked by him, the

retirement age of 65 applied only to employees in the U.S.A. and Puerto Rico.[33]

The motion for reconsideration was resolved by Deputy Minister Leogardo by Order dated July 25, 1985.[34] He declared that since the order of Director Estrella requiring reinstatement of Nolasco with full back wages had already become final and executory, attacks against that order "on the merits or in substance can no longer be entertained;" but this notwithstanding, a cause had supervened rendering the continuous execution of that final Order of November 19, 1979 unjust, (this supervening cause being) (Nolasco's) becoming 60 years of age sometime in May, 1982," which is the compulsory retirement age prescribed by Section 13, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code (overruling Nolasco's theory that the retirement age for MAI employees is 65). For this reason, Leogardo continued, Nolasco was "no longer entitled to back wages after he became 60 years old in May, 1982; (and) back wages paid to him after May, 1982 should be credited as (full satisfaction of) retirement pay benefits. Hence, according to Leogardo, "the judgment should be considered fully satisfied and (the case) deemed closed and terminated."

NLRC Resolution Remanding Case For Further Proceedings

This Order of July 25, 1985 did not end MAI's travails, however. There still remained the matter of Nolasco's appeal from the decision of Arbiter Lasquite.[35] The appeal was decided by the National Labor Relations Commission en banc in a Resolution promulgated on August 28, 1985.[36] The Commission overruled the Lasquite decision — which held that Nolasco's complaint was barred by res judicata — and remanded the case back to the arbiter "for further appropriate proceedings." According to the Commission:

> "The record shows that the first case between the parties docketed as Case No. R4-STF-2-848-79, had for its cause of action the complainant's illegal discharge from employment on 31 January 1979. The present case is for payment of damages allegedly arising from the respondent's bad faith in causing the abolition of the complainant's position to render nugatory his reinstatement under a final judgment. There is, therefore, no

identity of either subject matter or cause of action between the two cases, so that the final judgment in the earlier case did not bar the prosecution of the later one. We find that the Labor Arbiter erred in holding otherwise.

We are not, of course, saying that the complainant is entitled to the relief prayed for in the instant case. That can he determined only after proper hearing on its merits. And that is precisely why we hold that further proceedings in the case should be conducted."[37]

MAI's Motion for Reconsideration

Once again MAI had to apply for relief against an adverse ruling. This it did on October 2, 1985, by filing a "Motion for Reconsideration and Motion to Set for Oral Argument." It pointed out inter alia that: (1) Nolasco's appeal from the decision of Arbiter Lasquite — adjudging his second action to be barred by res judicata — was out of time and should have been dismissed, citing Vir-Jen Shipping & Marina Services, Inc. vs. NLRC, 115 SCRA 347, 361; (2) in any case, Lasquite was quite correct in ruling that res judicata does exist; (3) there are two contradictory resolutions dealing with the same matter; and (4) the amount of back salaries which it (MAI) had thus far been compelled to pay more than satisfies the total amount due Nolasco.[38] MAI's motions were denied by the Commission, by Resolution dated January 7, 1986.[39]

Grave Abuse of Discretion

a) In Ignoring Real Juridical Situation and Established Remedies

The NLRC was clearly wrong, and gravely abused its discretion, in ignoring or failing to comprehend the self-evident fact that the matter before it was, at bottom, nothing more than the failure or claimed inability of an employer to comply with a final and executory judgment for the reinstatement of an employee. In this situation, the plain and obvious remedy was simply the compulsion of the employer by writ of execution to effect the mandated reinstatement and pay the amounts decreed in the judgment, and disregard or overrule the employer's claim of inability to reinstate the employee or, in the event

that there be valid and insuperable cause for such inability to reinstate, take account of this factor in the process of directing and effectuating the award of relief to the employee consistently with the judgment.[40] But, to repeat, the plain and obvious remedy is execution. The remedy is certainly never the institution of a separate action, whether in the regular courts or the Labor Arbiters' Branch. Such a recourse would be violative of the well settled principle of *res adjudicata*, and would give rise to that multiplicity of actions which the law abhors and exerts every effort to eschew.

What happened here, as already intimated, is that the single, particular act of MAI in refusing or professing inability to comply with the executory judgment to reinstate Nolasco was made the subject of two proceedings: one, execution, and two, a new and separate action, instituted by Nolasco in the NLRC for damages (compensatory, moral, and exemplary) and attorney's fees aggregating the stupendous amount of P1,539,837.00.[41] Thus, even while Nolasco was prosecuting his new action, the public respondents, with full knowledge thereof, authorized execution of the original judgment. Worse yet, after that execution had resulted in the coerced payment by MAI of the no mean sum of P239,850.00 to Nolasco, and after Director Leogardo had declared that on account thereof, "the judgment should be considered fully satisfied and (the case should be) deemed closed and terminated,"[42] respondent NLRC still refused to dismiss the second action and instead directed the Arbiter to conduct "further appropriate proceedings" to determine whether or not MAI was guilty of "causing the abolition (in bad faith) of the complainant's position to render nugatory his reinstatement under a final judgment" so as to render it liable for the payment of additional damages in the claimed amount of P1,539.837.00 as aforestated.[43] A more striking example of "having one's cake and eating it, too," can hardly be conceived.

b) In Ignoring Tardiness of Nolasco's Appeal

So, too, it was clearly wrong, and in grave abuse of discretion, for the Commission to fail or refuse to take account of the fact — clearly shown by the record and to which its attention had repeatedly been drawn — that the appeal taken by Nolasco from the decision of Arbiter Lasquite of August 2, 1984, dismissing his complaint, was

late, because perfected on September 24, 1984, twelve (12) days after service on him of notice of the decision on September 12, 1984,[44] the reglementary period for appeal being fixed by the Labor Code at ten (10) days.[45] No acceptable reason has been advanced by Nolasco, and none appears upon the record, to excuse his tardiness in the taking of the appeal. MAI's opposition to the appeal should have been sustained, and the NLRC should never have taken cognizance of the appeal. In doing so, and in resolving the appeal adversely to MAI, it acted so whimsically, capriciously and arbitrarily as to call for this Court's correcting hand.

c) In Ignoring Event Rendering Reinstatement Moot

Yet a third serious mistake, amounting to grave abuse of discretion, too, may be ascribed to the Commission; and that is, its refusal, or neglect to consider the fact — again quite plain from the record and to which MAI had adverted more than once — that the matter of Nolasco's reinstatement had become moot and academic at the time that he filed his second action before the labor arbiters' office against MAI on August 16, 1982; for as of that day, he had already reached the age of 60 years,[46] which is the retirement age fixed by the Labor Code.[47]

WHEREFORE, the writs of certiorari and prohibition prayed for are granted. The Court annuls and sets aside the alias writ of execution issued on February 2, 1985, the Order of Deputy Minister Leogardo of May 27, 1985, the Order of Director Pucan of May 28, 1985, the order of Deputy Minister Leogardo of July 25, 1985, and the resolutions of the National Labor Relations Commission of August 28, 1985 and January 7, 1986. The Court reinstates the decision of Labor Arbiter Lasquite dated August 2, 1984 and declares it to be the law of the case together with the decision of November 19, 1979. The Court further commands the private respondent, Rodolfo Nolasco, to return to petitioner MAI the difference between the sum of P239,850.00, received by him pursuant to the Orders of May 27 and 28, 1985, and such other amounts delivered to him in execution of the decision of November 19, 1979, on the one hand, and on the other, the total amount of back salaries and pecuniary benefits due to him in accordance with said judgment of November 19, 1979, computed up to his 60th birthday in May, 1982, and inclusive of retirement

benefits under the company plan. Costs against the private respondent.

Yap, *J.*, *(Chairman)*, Melencio-Herrera, Cruz, Gancayco and Sarmiento, *JJ.*, concur.
Feliciano, *J.*, on leave at time of deliberation.

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[1] Rollo, pp. 31 et seq.
[2] Id., pp. 39-41.
[3] Id., p. 62.
[4] MAI at first claimed that someone else had already been appointed to Nolasco's position. Later, it averred that in connection with a reorganization program, the position had been absorbed by that of Technical Support Manager which, in turn had afterwards been abolished, and its functions taken over by a Technical Operations Committee (id., p. 9.).
[5] Id., p. 42.
[6] Id., p. 10.
[7] Id., pp. 10, 43-44.
[8] Id., pp. 45-49.
[9] Id., p. 47.
[10] Id., pp. 58, 68.
[11] Id., pp. 65-66.
[12] Id., pp. 66-67.
[13] Id., p. 68.
[14] Id., p. 70.
[15] Id., pp. 71-78.
[16] Id., pp. 79-91.
[17] See footnote 1, supra.
[18] Rollo, pp. 92-93.
[19] Id., pp. 94-95.
[20] Id., pp. 96-97.
[21] Id., pp. 98-99.
[22] Id., p. 103.
[23] Id., pp. 104-109.
[24] Id., p. 100.
[25] Id., pp. 111-114.
[26] Id., p. 115.
[27] Id., p. 116.
[28] See footnote 20, supra.
[29] Rollo, p. 130.
[30] Id., pp. 122, 130-131, 134.
[31] Id., pp. 117 et seq.
[32] See footnote 27, supra.

[33] Rollo, pp. 126-128.
[34] Id., pp. 135-138.
[35] See footnote 15, supra.
[36] Rollo, pp. 147-150.
[37] Emphasis supplied.
[38] Id., pp. 161-168.
[39] Id., pp.
[40] Tajonera vs. Lamorosa, 110 SCRA 438.
[41] See footnote 8 and related text, supra.
[42] See footnote 34 and related text, supra.
[43] See footnote 36 and related text, supra.
[44] See footnotes 14 and 15 related text, supra.
[45] Art. 223, Labor Code.
[46] See footnote 9 and related text, supra.
[47] See footnotes 33 and 34, and related text, supra.