CHANROBLES PUBLISHING COMPANY

SUPREME COURT
THIRD DIVISION

PARAMOUNT VINYL PRODUCTS CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 81200
October 17, 1990

NATIONAL LABOR RELATIONS COMMISSION AND PARAMOUNT INDEPENDENT WORKERS UNION,
***Respondents*.**
x----------x

D E C I S I O N

CORTES, *J.*:

The controversy centers around the execution proceedings of an action for unfair labor practice filed by private respondent Paramount Independent Workers Union (hereinafter referred to as UNION) against petitioner Paramount Vinyl Products Corporation, docketed as NLRC-NCR Case No. 5-2328-83.

The antecedent facts of the case are as follows:

On September 23, 1983, the Labor Arbiter in NLRC-NCR Case No. 5-2328-83 declared petitioner guilty of unfair labor practices for

illegally shutting-down operations at its Valenzuela plant and locking out its workers on January 3, 1983, in violation of the existing collective bargaining agreement and Batas Pambansa Blg. 130. The dispositive portion of the decision reads as follows:

> WHEREFORE, pursuant to all of the foregoing, judgment is hereby rendered declaring the defaulting respondent COMPANY guilty of unfair labor practices as charged and ordering it to cease and desist from further committing the same; and to reinstate the more than 200 members of the complainant UNION to their former positions without loss of seniority rights and to pay them backwages from January 3, 1983 until actually reinstated less whatever separation benefits were received by those who were forced to resign from the COMPANY.
>
> SO ORDERED [Decision of the Labor Arbiter, p. 6, Rollo, p. 29].

Petitioner interposed an appeal to the NLRC, but the Labor Arbiter's decision was affirmed on August 13, 1984. Petitioner then filed a petition for a writ of *certiorari* with this Court, which was dismissed on December 10, 1984 for lack of merit.

On April 29, 1985, the UNION filed with the Labor Arbiter an "Urgent Motion and Manifestation", seeking to expedite the issuance of a writ of execution. The motion contained a computation of backwages and other employment benefits due to about two hundred (200) union members.

Petitioner then filed its comment to the UNION's motion on June 18, 1985, claiming that fifty (50) of the members found in the UNION's list have resigned and executed releases, waivers and quitclaims in favor of the company. Petitioner also sought the exclusion of fifteen (15) listed union members who were no longer in its employ prior to January 3, 1983.

Subsequently, the Acting Chief of the Research and Information Unit [RIU] of the Ministry (now Department) of Labor and Employment submitted on October 22, 1985 a computation of the backwages due

to one hundred thirty seven (137) union members, in the total amount of P1,977,371.50. The list of union members entitled to backwages included twenty two (22) members who were not yet reinstated as of September 20, 1985 and one hundred fifteen (115) who were reinstated by petitioner prior to the rendition of the Labor Arbiter's decision of September 23, 1983.

A conference then was held between the parties on November 11, 1985, wherein it appears that the UNION did not pose any objections to the RIU report, save for its allegation that three (3) union members had been inadvertently left out of the report, and its request for the recomputation of the backwages awarded to two (2) other listed members. On the other hand, petitioner on November 21, 1985 filed its formal comment to the RIU report, opposing certain aspects of the socio-analyst's mode and method of computation. Petitioner argued that: (1) the salary base for the computation of backwages refers to the basic salary only, excluding the ECOLA and 13th month pay; (2) the period for computation of backwages should be reckoned with from July 1, 1983 up to November 30, 1984 only, the day its plant burned down resulting in the temporary lay-off of several employees; (3) the computation of backwages be based on actual working days instead of calendar-working days, and on the basic daily wages then prevailing at the time; (4) fifty-five (55) of the union members listed in the RIU report who were reinstated voluntarily by petitioner within the first six months after the shut-down were not entitled to the award of backwages; (5) seventeen (17) union members should be excluded from the RIU report because they were no longer connected with the company, or were transferred, or were under indefinite suspension long before the January 3, 1983 shut-down; and, (6) the computed backwages of six (6) other union members should be reduced.

Based on the RIU report, and the parties' comments thereto, the Labor Arbiter issued an order dated November 27, 1985, directing the petitioner to pay backwages to one hundred twenty three (123) union members in the total amount of P589,021.00. The list included five (5) union members[**] who had not yet been recalled and reinstated by petitioner, three (3) union members[***] who had been recalled but had not yet reported for work, and one hundred (100) union members who had been reinstated. The Labor Arbiter found merit in

the UNION's request for the inclusion of three (3) union members who were left out of the RIU report and for the recomputation of backwages awarded to two (2) listed members. With respect to the claims made by petitioner in its comment, the Labor Arbiter ruled inter alia that: (1) the base for computation of backwages should consist of the basic salary and 13th month pay, exclusive of the ECOLA; (2) the period for computation of backwages should commence from January 3, 1983 the date of the illegal shut-down; and, (3) the computation of the basic salary should be computed on a daily basis and on actual working days in accordance with the rate prevailing at such time. On this last point, the Labor Arbiter reasoned that for the period of time the affected union members were deprived of work due to the illegal shut-down, they should not be awarded more than what the unaffected employees earned during the same period. Furthermore, the Labor Arbiter rejected petitioner's contention for the exclusion of fifty-five (55) union members from the list, but granted its request for the exclusion of seventeen (17) other members, finding merit thereto. The Labor Arbiter also found basis in petitioner's claim that its plant burned down in November 30, 1984, and accordingly ruled that for the five (5) union members who had not yet been recalled by petitioner (See Footnote[**]), the period for computation of their backwages should be limited from January 3, 1983 up to November 30, 1984.

No timely appeal having been taken from the above order by either party, the Labor Arbiter issued on December 23, 1985 a writ of execution for the enforcement of its Order.

However, on January 2, 1986, the UNION, through its president Felix Emen, filed an "Urgent Motion and Manifestation for Clarification and Recomputation of Backwages", praying that petitioner be ordered to pay its union members the full amount of backwages computed in the RIU report. The UNION contended that the higher computation of backwages in the RIU report was the official amount due to its members.

Petitioner filed an opposition and motion to strike out the UNION's motion asserting, inter alia, that, in view of the failure of the UNION to appeal from the order dated November 27, 1985 within ten (10)

days from receipt thereof, that order has become final and executory. Petitioner further alleged that the same had been fully satisfied.

On January 28, 1986, the UNION filed its reply to petitioner's opposition and motion.

Thereafter, the Labor Arbiter issued an order dated April 16, 1986, noting therein that the UNION's motion was filed long after the November 27, 1985 order attained finality and was fully satisfied by petitioner (as evidenced by a Sheriffs report dated January 22, 1986). The Labor Arbiter reiterated as well the basis for the reduction of the computed award of backwages contained in the RIU report, explaining that the report was not ipso facto final and binding on him. But, apparently acknowledging an oversight, the Labor Arbiter ordered the petitioner to immediately reinstate the eight union members identified in his earlier order as those who had not yet been reinstated (See Footnotes[**] and[***]).

On May 15, 1986, the UNION, through its new counsel of record, interposed a partial appeal from the Labor Arbiter's orders dated November 27, 1985 and April 16, 1986 to the NLRC. This time, the UNION claimed that fifty (50) individuals who were forced to resign by petitioner were not included in the list of union members entitled to backwages. The UNION contended that the Labor Arbiter's order of November 27, 1985 was not a faithful implementation of the judgment rendered on September 23, 1983 wherein provision was made for the immediate reinstatement of those employees who were forced to resign and the payment of backwages less whatever separation benefits were received by them. The UNION also argued that the inexplicable failure of its original counsel of record to make a timely appeal from the November 27, 1985 order should not prejudice the interests of its members. The petitioner then filed its "Answer Ex Abundante Ad Cautelam and/or Motion to Dismiss" on May 29, 1986.

On August 12, 1987, the NLRC promulgated a decision, the pertinent portion of which reads:

> Indeed, the points invoked by the complainant in its appeal deserve a careful and serious scrutiny. Firstly, there is a gross and marked disparity between the award of P1,977,371.50 as

> computed by the Acting Chief, Research and Information Unit of the National Capital Region, and the amount of P589,021.00 as eventually arrived at by the Labor Arbiter. This computation must necessarily be looked into and carefully determined in the light of the final decision in this case considering that any order or writ should not vary the terms of the decision being executed. Accordingly, all parties concerned or involved in the execution of the final decision should be duly informed or amply notified of all proceedings pertaining to the execution of aforesaid judgment so that the end of justice may thus be subserved as in this case. Secondly, the charge that the Labor Arbiter omitted the fifty (50) complainants who were forced to resign after 3 January 1983 from his final computation of P589.201.00 merits sound reexamination in the light of the disquisition embodied in the final decision of the Labor Arbiter. And thirdly, the manner of the execution of the final decision of the Labor Arbiter, as implemented in the impugned orders and writ of execution, which may be a deviation from the terms and conditions of the decision can be subject of a proper appeal or relief [NLRC Decision, pp. 2-3; Rollo, pp. 181-182.]

The NLRC reversed the assailed orders and ordered the remand of the case to the Labor Arbiter for further proceedings.

On August 27, 1987, petitioner moved for a reconsideration of this decision. The NLRC denied petitioner's motion in a Resolution dated November 11, 1987.

Hence, petitioner interposed the instant petition with application for a temporary restraining order and/or preliminary injunction. On January 20, 1988, the Court issued a temporary restraining order enjoining the NLRC from enforcing and carrying out its decision dated August 12, 1987.

Public respondent, through the Solicitor General, and the UNION filed separate comments to the petition. Petitioner submitted its reply to the Solicitor General's comment. Thereafter, considering the allegations contained, issues raised and arguments adduced in the pleadings, the Court resolved to give due course to the petition and required the parties to submit their respective memoranda. In

compliance therewith, the petitioner and UNION filed their memoranda. The Solicitor General, on the other hand, filed a manifestation adopting his comment as memorandum.

The issue presented for adjudication in this petition is whether or not there was grave abuse of discretion on the part of the NLRC in setting aside the orders of the Labor Arbiter dated November 27, 1985 and April 16, 1986, and in ordering a review of the list of union members entitled to reinstatement and backwages, and a recomputation of the amount of backwages awarded.

An appeal from a decision, award or order of the labor arbiter must be brought to the NLRC within ten (10) calendar days from receipt of such decision, award, or order, otherwise, the same becomes final and executory [Article 223 of the Labor Code]. And for purposes of determining its timeliness, a motion for reconsideration may be properly treated as an appeal and therefore must likewise be filed within the ten-day reglementary period [The Insular Life Assurance Company, Ltd. vs. NLRC, G.R. No. 74191, December 21, 1987, 156 SCRA 740; See also Camacho vs. CA, G.R. No. L-21850, April 29, 1977, 76 SCRA 531].

In the case at bar, the Labor Arbiter's order dated November 27, 1985 was duly received by the UNION through its counsel of record on November 29, 1985. However, the UNION's "Urgent Motion and Manifestation for Clarification and Recomputation of Backwages", which in effect was a motion for reconsideration, was filed more than 30 days thereafter, or on January 2, 1986. By then, the order of the Labor Arbiter long became final and executory on account of the failure of the UNION and petitioner to appeal therefrom within the reglementary period provided under the law.

Well-settled is the rule that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but also jurisdictional. Failure to interpose a timely appeal (or a motion for reconsideration) renders the assailed decision, order or award final and executory that deprives the appellate body of any jurisdiction to alter the final judgment [Cruz vs. WCC, G.R. No. L-42739, January 31, 1978, 81 SCRA 445; Volkshel Labor Union vs. NLRC, G.R. No. L-39686, June 28, 1980, 98 SCRA 314; Acda vs. Minister of Labor, G.R.

No. 51607, December 15, 1982, 119 SCRA 306; Rizal Empire Insurance Group vs. NLRC, G.R. No. 73140, May 29, 1987, 150 SCRA 565; MAI Philippines Inc. vs. NLRC, G.R. No. 73662, June 18, 1987, 151 SCRA 196; Narag vs. NLRC, G.R. No. 69628, October 28, 1987, 155 SCRA 199; John Clement Consultants, Inc. vs. NLRC, G.R. No. 72096, January 29, 1988, 157 SCRA 635; Bongay vs. Martinez, G.R. No. 77188, March 14, 1988, 158 SCRA 552; Manuel L. Quezon University vs. Manuel L. Quezon Educational Institution, G.R. No. 82312, April 19, 1989, 172 SCRA 597]. This rule "is applicable indiscriminately to one and all since the rule is grounded on fundamental consideration of public policy and sound practice that at the risk of occasional error, the judgment of courts and award of quasi-judicial agencies must become final at some definite date fixed by law" [Volkschel Labor Union vs. NLRC, supra, at p. 322]. Although, in a few instances, the Court has disregarded procedural lapses so as to give due course to appeals filed beyond the reglementary period (See Flexo Manufacturing Corporation vs. NLRC, G.R. No. 55971, February 28, 1985, 135 SCRA 145; Firestone Tire & Rubber Co. vs. Lariosa, G.R. No. 70479, February 27, 1989, 148 SCRA 187; Chong Guan Trading vs. NLRC, G.R. No. 81471, April 26, 1989, 172 SCRA 831], the Court did so on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a grave miscarriage thereof.

No acceptable reason has been advanced and none appears on record to excuse the tardiness exhibited by the UNION. The UNION's claim that its right to seek a review of the November 27, 1985 order was lost through the inadvertence or refusal of its counsel of record is, at best, self-serving. The legal consequences arising out of the failure of the UNION's attorney to timely file a motion for reconsideration or appeal from the November 27, 1985 order of the Labor Arbiter are binding upon petitioner. A client is generally bound by the action of his counsel in the management of a litigation, as by the attorney's mistake or negligence in procedural technique [US vs. Umali, 15 Phil. 33 (1910); Montes vs. Court of First Instance of Tayabas, 48 Phil. 640 (1926); Inocando vs. Inocando, 110 Phil. 266 (1960); Rizal Commercial Banking Corporation vs. Dayrit, G.R. No. 63372, June 28, 1983, 123 SCRA 203; Ayllon vs. Sevilla, G.R. No. 79244, December 10, 1987, 156 SCRA 257]. Absent a clear showing of fraud

or excusable negligence on the part of the UNION'S counsel, the Court finds no cogent reason to depart from the foregoing rule.

Respondents, however, take the position that the case at bar is an exception to the general rule on the finality of decisions, awards and orders. They contend that the Labor Arbiter's orders dated November 27, 1985 and April 16, 1986, respectively, varied the tenor of, and failed to substantially conform to that decreed in, the judgment rendered against petitioner on September 23, 1983. Respondents conclude that the NLRC had appellate jurisdiction to set aside these void orders and to require a comprehensive review of the union members entitled to reinstatement and backwages, and a recomputation of the amount of backwages due them.

In support of their position, respondents challenge three principal features of the Labor Arbiter's order. First of all, respondents charge that the order failed to direct petitioner to reinstate and pay backwages to fifty (50) union members claimed by petitioner to have resigned and executed quitclaims or releases in favor of the company. They argue that the order thereby contravened the final judgment against the company which ordered the reinstatement of those union members who were forced to resign. (This charge, incidentally, was the sole basis of the UNION's appeal before the NLRC.) The Solicitor General further argues that the Labor Arbiter failed to rule on the matter of whether these individuals were forced, or voluntarily, resigned from their employment. Secondly, the respondents assail the ruling of the Labor Arbiter which limited the period for the computation of backwages until November 30, 1984 for five (5) union members. (See Footnote[**]). They dispute the veracity of petitioner's claim that its plant burned down on said date and resulted in the temporary lay-off of employees. Thirdly, respondents claim error in the salary base used by the Labor Arbiter in his computation of backwages.

The first and second points raised by respondents are addressed to the factual findings of the Labor Arbiter in the proceedings below. Based on a review of the records of the execution proceedings before the Labor Arbiter, the Court finds substantial basis for these findings.

After the submission of the UNION's "Urgent Motion and Manifestation" dated April 28, 1985 containing the list of over two hundred (200) union members claimed to be entitled to reinstatement and/or backwages, and the petitioner's comment thereto claiming, on the other hand, that fifty (50) of the individuals listed in the UNION's list had resigned and executed quitclaims or waivers, the Research and Information Unit of the DOLE submitted its own list of affected union members. The RIU list did not contain the names of the fifty (50) members. It is noteworthy that the UNION raised no objection to the RIU report except for its request that three (3) other union members be included in the list. Working initially from the official RIU list of union members, the Labor Arbiter rendered his order of November 27, 1985, incorporating the points raised by both parties in their respective comments to the RIU report which he found to be meritorious. Again, no timely opposition was raised by the UNION before the Labor Arbiter regarding the exclusion of the fifty (50) union members from the Labor Arbiter's order. In fact, in the UNION's "Urgent Motion and Manifestation for Clarification and Recomputation of Backwages" belatedly filed by the UNION's president, Felix Emen, on January 2, 1986, the UNION did not dispute the non-inclusion of the fifty (50) union members, but, instead, insisted that the Labor Arbiter adopt the RIU list.

Neither does it appear that the UNION was deprived of the opportunity to assert and substantiate before the Labor Arbiter its claim that the fifty (50) union members had been forced or coerced to resign and execute quitclaims in favor of petitioner. It simply failed to do so.

The same could be said with respect to the fixing of the period of the computation of backwages until November 30, 1984 for five (5) union members who had not yet been recalled by petitioner. November 30, 1984 was allegedly the date petitioner's plant burned down, resulting in the temporary lay-off of employees. It appears that this particular claim was not disputed by the UNION during the proceedings before the Labor Arbiter or the NLRC. It is in its comment filed before the Court that the UNION attacks for the first time the veracity of petitioner's claim.

Considering the foregoing, the Court finds no legal infirmity tainting the Labor Arbiter's order of November 27, 1985 which excluded the names of the fifty (50) union members from the list of employees entitled to backwages and reinstatement, and which limited the period for computing the backwages due to the five (5) union members. It bears emphasizing that the execution proceedings below were undertaken precisely to facilitate the identification of each union member entitled, under the decision, to backwages and reinstatement, the computation of the exact amount due to these members, and the consideration of supervening events which affect the manner and extent of the execution. And inasmuch as the UNION failed to interpose a timely opposition to, or appeal from, the Labor Arbiter's order, re-examination of the correctness of the Labor Arbiter's findings of fact is accordingly foreclosed.

But there is merit in the third point raised by respondents herein. The determination of the salary base for the computation of backwages requires simply an application of judicial precedents defining the term "backwages". Unfortunately, the Labor Arbiter erred in this regard. An unqualified award of backwages means that the employee is paid at the wage rate at the time of his dismissal [Davao Free Worker Front vs. Court of Industrial Relations, G.R. No. L-29356, October 27, 1975, 67 SCRA 418; Capital Garments Corporation vs. Ople, G.R. No. 53627, September 30, 1982, 117 SCRA 473; Durabilt Recapping Plant & Company vs. NLRC, G.R. No. 76746, July 27, 1987, 152 SCRA 328]. And the Court has declared that the base figure to be used in the computation of backwages due to the employee should include not just the basic salary, but also the regular allowances that he had been receiving, such as the emergency living allowances and the 13th month pay mandated under the law [See Pan-Philippine Life Insurance Corporation vs. NLRC, G.R. No. 53721, June 29, 1982, 144 SCRA 866; Santos vs. NLRC, G.R. No. 76721, September 21, 1987, 154 SCRA 166; Soriano vs. NLRC, G.R. No. 75510, October 27, 1987, 155 SCRA 124; Insular Life Assurance Co., Ltd. vs. NLRC, supra.] In his computation of the amount of backwages, the Labor Arbiter without legal basis excluded the ECOLA. It is on this score alone that the Labor Arbiter's order dated November 27, 1985 should be set aside. The Court holds that notwithstanding the belated appeal by the UNION, the assailed order should be modified with respect to the incorrect salary base used by

the Labor Arbiter in his computation of backwages. Where there is a patently improper application and interpretation of the law on the part of administrative officers who are tasked to perform quasi-judicial functions, the Court will not hesitate to disregard procedural rules so as to effect faithful adherence to that mandated under the law.

WHEREFORE, in view of the foregoing, the Petition is **GRANTED** and the NLRC decision dated August 12, 1987 and resolution dated November 11, 1987 are hereby **SET ASIDE**, for having been rendered in grave abuse of discretion. The temporary restraining order issued by this Court is made **PERMANENT**. However, the case is ordered **REMANDED** to the Labor Arbiter for the recomputation of the amount of backwages awarded to the union members listed in his order dated November 27, 1985, by including in the base figure, their basic salary, 13th month pay and ECOLA, and for the issuance of a writ of execution requiring petitioner to pay the corresponding difference.

SO ORDERED.

Fernan, *C.J.*, Gutierrez, Jr. and Bidin, *JJ.*, concur.
Feliciano, *J.*, on leave.

[**] Antonia Estrella, Cristina Legaspi, Anacorita Hermoso, Myrna Percel, and Teodora Dimla.
[***]Nimfa Ancheta, Larcy Asinas and Perla Paet.

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