

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**PHILIPPINE AIRLINES, INC.,
*Petitioner,***

-versus-

**G.R. No. 55159
December 22, 1989**

**NATIONAL LABOR RELATIONS
COMMISSION and ARMANDO
DOLINA,
*Respondents.***

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D E C I S I O N

CORTES, J.:

Petitioner impugns in this Petition for *Certiorari* that part of the public respondent National Labor Relations Commission's (NLRC) decision in NLRC Case No. RB-IV 9319-77 which ordered petitioner to restore private respondent Dolina to its payroll, and to pay his salaries from 1 April 1979 "until this case is finally resolved" [Rollo, p. 33]. Petitioner contends that public respondent NLRC gravely abused its discretion considering that in the same decision public respondent affirmed the decision of the Labor Arbiter in toto granting respondent's application for clearance to dismiss the private respondent.

The pertinent facts are as follows:

Private respondent Dolina was admitted to the Philippine Airlines (PAL) Aviation School for training as a pilot beginning 16 January 1973. The training agreement bound PAL to provide regular and permanent employment to Dolina upon completion of the training course. On 25 January 1974, Dolina completed the course, and undertook an equipment qualification course up to 4 October 1974. On 9 October 1974, the Civil Aeronautics Administration issued him a license as Commercial Pilot and PAL then extended him a temporary appointment for six (6) months as Limited First Officer. When his appointment was due to expire on 30 April 1975, Dolina had only logged eighty four (84) hours and fifty five (55) minutes flying time, short of the minimum 500 flying hours required for regularization as First Officer. To enable him to complete the requirement, his employment was extended for another six months which appointment was described as “permanent.” On 31 October 1975, when his appointment was again due to expire, he was still short of the minimum flying time requirement such that his appointment was again extended up to 30 April 1976. During this third extension of his appointment, Dolina completed the 500 flying hours requirement, and thus on 31 March 1976 he applied for regularization as First Officer. Pending his physical examination by the chief Flight Surgeon, his appointment was again extended to 31 October 1976. On 17 August 1976, Dolina took a psychological examination wherein his “Adaptability Rating” was found to be “unacceptable” [Annex “L” to the Petition. p. 8; Rollo, p. 116]. On 23 September 1976, complainant was again subjected to an examination and interview by the Pilot Acceptance Qualifications Board as part of the regularization process, which examination revealed the following:

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- b. Armando Dolina — After thorough evaluation of the candidate’s past records, his performance and the result of his medical examination as submitted by the Medical Sub-Department, the Board finds Mr. A. Dolina not qualified for regular employment in the Company.

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[NLRC Decision, pp. 3-4; Rollo, pp. 25-26].

Conformably, the Board recommended the termination of the complainant pursuant to which PAL filed a clearance application [Rollo, p. 34] for Dolina's termination. In the meantime Dolina was placed under preventive suspension effective 1 October 1976. Dolina countered with a complaint for illegal dismissal on 6 October 1976 [Rollo, 35]. On 26 January 1977 the Officer-in-Charge of the Department of Labor Regional Office No. IV lifted the preventive suspension, and ordered petitioner to reinstate Dolina to his former position with full backwages from 1 October 1976 up to actual reinstatement. The issue of termination and damages was referred to the Executive Labor Arbiter for compulsory arbitration [Rollo, p. 71].

Petitioner appealed the order lifting Dolina's suspension to the Secretary of Labor. However, on 2 March 1977, pending the resolution of petitioner's appeal, the parties signed an agreement before the Undersecretary of Labor, the terms of which are as follows:

AGREEMENT

The undersigned parties hereby agree to the following:

1. While pending final resolution of the complaint of Mr. Armando Dolina against the Philippine Airlines, he shall be considered in the payroll effective 1 October 1976.
2. The order of Regional Director Vicente Leogardo for the reinstatement with backwages of Mr. Dolina is hereby rendered moot and academic.
3. The parties shall consider this arrangement pending final resolution of the case by arbitration.

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Subsequently, on 30 May 1977, the Acting Secretary of Labor issued an order finding that the propriety of the suspension had been rendered moot and academic by the above agreement and referred

the case for compulsory arbitration to the Executive Labor Arbiter [Annex "J" to the Petition; Rollo, p. 85]. On 23 March 1979, the Labor Arbiter rendered its decision, the dispositive portion of which reads as follows:

IN VIEW OF ALL THE FOREGOING, it is our considered opinion that there is merit on the application for clearance, and therefore, the same should be as it is hereby GRANTED. Consequently, the oppositor's TERMINATION IS IN ORDER.

Since the termination is upheld, perforce the claim for moral damages is denied. Besides pursuant to P.D. No. 1367 dated May 1, 1978, this office is devoid of jurisdiction to entertain said claim.

SO ORDERED. [Decision of Labor Arbiter, p. 12; Rollo, p. 97].

By virtue of the above decision, PAL removed Dolina from its payroll effective 1 April 1979. Dolina then appealed the Labor Arbiter's decision to the public respondent NLRC on 29 April 1979 and there filed a motion praying that PAL be ordered to return him to PAL's payroll, contending that the Labor Arbiter's decision was not yet final because of his timely appeal. PAL opposed the motion claiming that it was no longer obliged to return Dolina to its payroll since the decision of the Labor Arbiter dated 23 March 1979 in its favor was a final resolution of the case by arbitration [Annex "N" to the Petition, p. 1; Rollo, p. 137].

On 8 February 1980, public respondent NLRC rendered its decision containing the assailed portion to wit:

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In fine it is our considered view that the respondent's application for clearance to dismiss the complainant has sufficiently surmounted the test of validity.

Be that as it may, we are not in accord with the discontinuation of the payment of complainant's salaries. The agreement of the parties stipulated in no uncertain terms that the complainant

[Dolina] is to be carried in respondent's payroll until this case is finally resolved. As things stand, the main issue is still being litigated. The complainant, therefore, must be restored to the payroll and paid for his salaries from 1 April 1979, the date he was dropped from the respondent's payroll.

WHEREFORE, the Decision appealed from should be as it is hereby affirmed in toto. However the respondent is ordered to restore the complainant to its payroll and to pay his salaries from 1 April 1979 until this case is finally resolved.

SO ORDERED. [NLRC Decision, pp. 10-11; Rollo, pp. 32-33; Emphasis supplied].

Hence, this petition, with a prayer for a temporary restraining order. The Court issued a temporary restraining order on 10 October 1980. Private respondent Dolina failed to file his comment and the Solicitor General submitted his own Comment supporting the stand of petitioner. Due to the adverse stand of the Solicitor General, public respondent NLRC submitted its own Comment.

The issue before the Court is whether or not the NLRC committed grave abuse of discretion in holding that private respondent Dolina was entitled to his salaries from 1 April 1979 "until this case is finally resolved."

PAL contends that inasmuch as the respondent Commission acting en banc had affirmed in toto the decision of the Labor Arbiter granting petitioner the clearance for the dismissal of private respondent Dolina, it is an act of grave abuse of discretion amounting to lack of jurisdiction on its part to order petitioner to pay private respondent's salaries from April 1979 until the case is finally terminated. PAL contends that said stipulation refers only to the resolution of the case by arbitration and said arbitration of the case was terminated when the Labor Arbiter rendered its decision dated 23 March 1979. PAL argues that the arbitration of the case is limited to and comprises merely the proceedings before the Labor Arbiter such that when the latter renders a decision, arbitration of the dispute is terminated.

Public respondent NLRC on the other hand contends that arbitration is a continuing process from the time the case is referred by the Secretary of Labor to the Arbitration Branch until the final judgment is had on appeal. Since the Labor Arbiter's decision in favor of petitioner did not finally resolve the case in view of the timely appeal by private respondent from said decision, the case was not yet finally terminated by arbitration and Dolina is entitled to be placed in petitioner's payroll until the complaint is finally resolved.

The above contentions call for the proper interpretation of the agreement between the parties, specifically the third stipulation containing the clause "pending final resolution of the case by arbitration."

It is a basic rule in interpretation of contracts that the circumstances under which an instrument was made, including the situation of the subject thereof and the parties to it, may be considered so that the intention of the contracting parties may be judged correctly [Art. 1371, Civil Code of the Philippines; Section 11, Rule 130, Rules of Court; *Lim vs. Court of Appeals*, G.R. No. L-40258, September 11, 1980, 99 SCRA 668.] In the instant case, the stipulation in the 2 March 1977 agreement that Dolina shall be included in the payroll of PAL until final resolution of the case by arbitration was intended to supersede the order of the Regional Director which, by stipulation of the parties, was rendered moot and academic. In lieu of reinstatement and the payment of his backwages, private respondent was included in petitioner's payroll, effective from the time he was preventively suspended until final resolution of the case by arbitration, without having to perform any work for the petitioner. In entering into the agreement, the parties could not have intended to include in the clause "final resolution of the case by arbitration" the whole adjudicatory process, including appeal. For if it were so, even proceedings on certiorari before this Court would be embraced by the term "arbitration" and private respondent will continue to receive monthly salary without rendering any service to the petitioner regardless of the outcome of the proceedings before the Labor Arbiter, for as long as one of the parties appeal to the NLRC and until the case is finally resolved by this Court. This is clearly an absurdity which could not have been contemplated by the parties.

Neither can proceedings on appeal before the NLRC en banc be considered as part of the arbitration proceeding. In its broad sense, arbitration is the reference of a dispute to an impartial third person, chosen by the parties or appointed by statutory authority to hear and decide the case in controversy [Chan Linte vs. Law Union and Rock, Inc. Co., 42 Phil. 548 (1921)]. When the consent of one of the parties is enforced by statutory provisions, the proceeding is referred to as compulsory arbitration. In labor cases, compulsory arbitration is the process of settlement of labor disputes by a government agency which has the authority to investigate and to make an award which is binding on all the parties [See Wood vs. Seattle, 23 Wash. 1, 62 P 135, 52 LRA 369 (1920); Amalgamated Association vs. Wisconsin Employees' Relations Board, 340 U.S. 383-410, 95 L. Ed. 381 (1951)]. Under the Labor Code, it is the Labor Arbiter who is clothed with the authority to conduct compulsory arbitration on cases involving termination disputes [Article 217, Pres. Decree No. 442, as amended]. When the Labor Arbiter renders his decision, compulsory arbitration is deemed terminated because by then the hearing and determination of the controversy has ended. Any appeal raised by an aggrieved party from the Labor Arbiter's decision is already beyond the scope of arbitration since in the appeal stage, the NLRC en banc merely reviews the Labor Arbiter's decision for errors of fact or law and no longer duplicates the proceedings before the Labor Arbiter. Thus, the clause "pending final resolution of the case by arbitration" should be understood to be limited only to the proceedings before the Labor Arbiter, such that when the latter rendered his decision, the case was finally resolved by arbitration.

More important, however, is the fact that the NLRC's order for the continued payment of Dolina's salaries is inconsistent with its affirmance of the Labor Arbiter's decision upholding the validity of Dolina's dismissal. In affirming the Labor Arbiter's decision granting the termination clearance, the NLRC held that:

With respect to the issue of whether or not the complainant's [Dolina] dismissal was sufficiently grounded, we are not persuaded that the respondent [herein petitioner PAL] is under obligation to employ him as regular employee simply because he was certified physically fit and technically proficient by the CAA.

This is understandable for it concerns the safety of its properties, and above all, the safety of the lives and properties of its passengers, which by law it is committed to transport safely. In the absence, therefore, of any showing that its standards are unreasonable and discriminatory, which we do not find here, We cannot disturb them. We can only say that for exercising extraordinary diligence in the selection of its pilots, We join the public in commending it.

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In fine, it is Our considered view that the respondent's application for clearance to dismiss the complainant has sufficiently surmounted the test of validity.

In view of the above finding of valid dismissal, the NLRC had no authority to order the continued payment of Dolina's salaries from 1 April 1979 until the case is finally resolved. The NLRC's order would result in compensating Dolina for services no longer rendered and when he is no longer in PAL's employ. This is contrary to the age-old rule of "a fair day's wage for a fair day's labor" which continues to govern the relation between labor and capital and remains a basic factor in determining employees' wages [Durabilt Recapping Plant & Co. vs. National Labor Relations Commission, G.R. No. 76746, July 27, 1987, 152 SCRA 328]. So that, if there is no work performed by the employee there can be no wage or pay unless the laborer was able, willing and ready to work but was prevented by management or was illegally locked out, suspended or dismissed. Where the employee's dismissal was for a just cause, it would neither be fair nor just to allow the employee to recover something he has not earned and could not have earned [Santos vs. National Labor Relations Commission, G.R. No. 76721, September 21, 1987, 154 SCRA 166].

Moreover, in ordering the continued payment of Dolina's salaries from 1 April 1979 until the case is finally resolved, the NLRC in effect ordered the payment of backwages to Dolina notwithstanding its finding of a valid dismissal.

This is clearly untenable.

In the first place, backwages in general are granted on grounds of equity for earnings which a worker or employee has lost due to his illegal dismissal [New Manila Candy Workers Union (NACONWA-PAFLU) vs. Court of Industrial Relations, G.R. No. L-29728, October 30, 1978, 86 SCRA 37; Durabilt Recapping Plant & Co. vs. National Labor Relations Commission, supra; Chong Guan Trading vs. National Labor Relations Commission, G.R. No. 81471, April 26, 1989; Santos vs. National Labor Relations Commission, supra]. Where, as in this case, the dismissal was for a just cause, there is no factual or legal basis for ordering the payment of backwages. The order of the NLRC for the continued payment of Dolina's salaries would allow the latter to unjustly enrich himself at the expense of the petitioner. This Court has reiterated time and again that the law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer [Colgate Palmolive Philippines, Inc. vs. Ople, G.R. No. 73681, June 30, 1988, 163 SCRA 323]. In this case, the NLRC chose not to adhere with fidelity to this doctrine.

Secondly, NLRC's order for continued payment of Dolina's salary from 1 April 1979 up to the final resolution of the case would place Dolina in a better position than those workers who were found to have been illegally dismissed by their employer. For in the latter case, the backwages that can be recovered by the worker is limited to three years [Mercury Drug Co., Inc. vs. Court of Industrial Relations, G.R. No. L-23357, April 30, 1974, 56 SCRA 694; Philippine Airlines, Inc. vs. National Labor Relations Commission, G.R. No. 64809, November 29, 1983, 126 SCRA 223; Madrigal & Co., Inc. vs. Zamora, G.R. No. L-48237, Madrigal & Co., Inc. vs. Minister of Labor, G.R. No. L-49023, June 30, 1987] while Dolina, whose dismissal was found to be valid, can recover approximately ten years backwages, which corresponds to the period from 1 April 1979 until "final resolution" of the instant case.

Considering the foregoing, the Court holds that respondent NLRC's order for the continued payment of Dolina's salaries from "1 April 1979 until the case is finally resolved" is contrary to law and established jurisprudence and the NLRC acted in excess of its

jurisdiction in issuing the assailed order. In the recent case of Lora Motors, Inc. vs. Drilon, G.R. No. 82895, November 7, 1989 the Court held as an act without or in excess of jurisdiction the portion of the Labor Arbiter's award, which required the employer to pay to its employee an amount equivalent to a half month's pay for every year of service as retirement benefits, for being without basis either in law or contract. Similarly, there is in this case an excess of jurisdiction on the part of the NLRC in ordering the continued payment of Dolina's salaries "from 1 April 1979 until the case is finally resolved."

WHEREFORE, that part of the dispositive portion of the Decision of the National Labor Relations Commission in NLRC CASE NO. RB-IV-9319-77 requiring petitioner to restore private respondent to its payroll and ordering the payment of his salaries from 1 April 1979 until the case is finally resolved is hereby declared **NULL** and **VOID** and **SET ASIDE**. The temporary Restraining Order issued by the Court on 10 October 1980 is made **PERMANENT**.

SO ORDERED.

Fernan, C.J. (Chairman), Gutierrez, Jr., Feliciano and Bidin, JJ., concur.