

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**PHILIPPINE NATIONAL
CONSTRUCTION CORPORATION,
*Petitioner,***

-versus-

**G.R. No. 80485
November 11, 1988**

**DIRECTOR PURA FERRER-CALLEJA,
RASIDALI C. ABDULLAH,
ENFORCEMENT UNIT NCR
ARBITRATION BRANCH, REYNALDO
SANTOS, ET AL,**

Respondents.

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DECISION

GANCAYCO, J.:

The center of controversy in this Petition is whether or not the Bureau of Labor Relations has jurisdiction over the case involving the validity and refund of check-off assessments made by a labor union against the salaries of union members through the petitioner-employer. The other issue is whether or not petitioner has been afforded due process.

The 388 private respondents are employees of petitioner who are members of the PNCC Tollways Employees and Workers Union. The union, through its Executive Board, adopted on October 22, 1983 Executive Committee Resolution No. 001-83 providing for the affiliation of the union with the Central Luzon Labor Congress. The union also engaged the services of Atty. Emmanuel Clave as labor advocate, negotiator and adviser, with a compensation of 10% on any arbitration award, settlement, collective bargaining agreement (CBA) negotiation gains, plus expenses in the performance of his responsibilities. The said resolution provided that the advocate's fees due Atty. Clave, in any form, shall be subject to "check-off" arrangement with the petitioner.

Subsequently, the union adopted Executive Board Resolution No. 012-S-84 making the affiliation regular and the retainer of Atty. Clave as official.

The union passed Resolution No. 15-S-84 providing that each union member and all other rank and file employees of petitioner's Tollways Division shall be assessed the sum of 10% of all monetary benefits that may be due them as a result of collective bargaining, arbitration, and other forms of representation, and that the sums assessed shall be collected by the union by means of the check-off arrangement with petitioner and shall be paid to Atty. Clave, in accordance with the retainer agreement between Atty. Clave and the union. Resolution No. 15-S-84 was subsequently modified which affected the amount of negotiation fees payable to Atty. Clave, from 10% down to 5%.

After the promulgation of Resolution No. 15-S-84, the Acting President of the union issued a Memorandum dated June 2, 1984, directing all union members to comply with said resolution and to execute check-off authorization. The private respondents alleged that they did not comply with the directive of the Acting President, but the union officers stated that 167 employees accomplished the authorization forms and sent them to the personnel department of petitioner.

Petitioner, relying on Resolution No. 001-83, Resolution No. 15-S-84, Resolution No. 1-S-84, the letter dated January 4, 1984 by David Clave, and the letter dated October 1, 1983 by Cipriano Mangubat,

CLCC President, through the then Head of the Tollways Division, advanced the total amount of P120,000.00 to Atty. Clave, as follows:

- (1) P100,000.00 in August of 1984; and
- (2) P20,000.00 in February of 1985.

Petitioner, pursuant to Resolution No. 001-83, Resolution No. 15-S-84, General Membership Resolution No. 1-S-84, as well as the submitted individual check-off authorizations, deducted P20.00 monthly from the salaries of its employees subject of said resolutions, effective March, 1985. The deduction was increased to P30.00 monthly per employee, effective April, 1985. Petitioner was not able to check-off said amounts against all of its rank and file employees for the Tollways Division.

On April 17, 1985, petitioner turned over the total sum of Sixty Thousand Pesos (P60,000.00) to Atty. Clave coming from the check-off special assessments. On September 30, 1985, petitioner turned over to said lawyer the sum of Ten Thousand Pesos (P10,000.00) also out of the check-off special assessments.

Petitioner stopped the said deductions effective April, 1986, at which time it had allegedly collected a total amount of One Hundred Fifty-Five Thousand Eight Hundred Pesos (P155,800.00) as assessment fees.

On July 11, 1985, the 388 private respondents, members of the then CDCP Union, now PNCC Employees and Workers Union, filed a petition with the National Capital Region Director of the Department of Labor and Employment (DOLE) against their own union officers and the petitioner. The petition asked for the following reliefs:

- (1) The issuance of a temporary restraining order enjoining petitioner, as their employer, from further collecting special assessments from the salaries of the union members;
- (2) The issuance of an order requiring the petitioner-employer to deposit with the Regional Office of DOLE all sums of

money in its possession collected from employees pursuant to said assessment;

- (3) A declaration that the Resolution No. 15-S-84 of the Executive Board of the Union is null and void;
- (4) The issuance of an order permanently enjoining the petitioner-employer from making deductions from the employees' salaries by authority of Resolution No. 15-S-84; and
- (5) The issuance of an order directing the petitioner-employer and/or the union officers to return the amounts already deducted from their salaries pursuant to Resolution No. 15-S-84.

The petition was certified to the Med-Arbiter for hearing and resolution. The summons supposedly sent to the petitioner by the BLR was not served on responsible officials of petitioner. The records show that the first summons was served by a private messengerial company; the second summons was served on Armando Ancheta, a personnel assistant, on August 5, 1985; then upon Francisco Gabis, Jr., liaison officer, on August 14, 1985; and finally on Mary Fernandez, a clerk, on September 9, 1985. Petitioner was not able to file any pleading in the hearings of the case, and was unable to present its side.

On September 18, 1985, Atty. Clave moved to intervene and filed his position paper with the Med-Arbiter. On October 14, 1985, public respondent Med-Arbiter issued an Order, which declared Resolution No. 15-S-84 null and void and of no effect, ordered petitioner to stop collecting special assessments against the salaries of union members and other rank and file employees of petitioner, and ordered petitioner and the union, jointly and severally, to return to the employees concerned the amounts deducted from their salaries pursuant to Resolution No. 15-S-84. Atty. Clave filed an appeal with the BLR on November 15, 1985. On June 30, 1986, the then Director of the Bureau of Labor Relations, (BLR) Cresencio B. Trajano, dismissed the appeal and affirmed the order of the Med-Arbiter.

Public respondent BLR Director Pura Ferrer-Calleja issued a writ of execution on November 5, 1986, directing the Enforcement Unit of the NCR Branch to collect from petitioner-employer and/or the CDCP Union the sum of P257,400.00, the total amount of deductions made against the salaries of the employees, or to satisfy said amount from the movable or immovable properties of the petitioner and/or union which are not exempt from execution.

On December 29, 1986, petitioner filed an Urgent Motion for Reconsideration and to Quash Writ of Execution on the ground that it was denied due process because it was never notified of the proceedings and it had no opportunity to be heard. In an Order dated September 19, 1987, the Director of the BLR denied the motion for reconsideration.

The Director of BLR issued an alias writ of execution dated October 13, 1987. Notice of this writ was received by the petitioner on October 26, 1987 and subsequently the Enforcement Unit of the NCR Arbitration Branch garnished the bank deposits of petitioner with the Philippine National Bank (PNB) Buendia Avenue Branch and the Far East Bank and Trust Company, Shaw Boulevard Branch.

The responsible officials of petitioner who could have known of the case have left or were retired from the petitioner after the EDSA Revolution of February, 1986. The new management of the petitioner was never informed of this pending case, until petitioner received the first writ of execution. This was referred to the Office of the Government Corporate Counsel only on November 6, 1987.

Petitioner now questions the said orders of public respondents, as issued without jurisdiction, or in excess of their jurisdiction and/or committed with grave abuse of discretion, because —

- (1) There was a denial of petitioner's right to due process of law;
- (2) The jurisdiction of the Med-Arbiter and the BLR covers only disputes between and among the union, its officers and members, and that the BLR has no jurisdiction over matters where an interested party, like the petitioner-

employer therein, is involved;

- (3) The petitioner-employer has no obligation to guarantee that the agent of private respondents, namely the union acting through its officers, will faithfully comply with its obligation to its members;
- (4) The 167 workers who submitted individual written authorizations for check-off are now estopped from seeking a reimbursement from the petitioner;
- (5) Petitioner has a just claim amounting to P190,000.00 against the union for advocate's fees paid to Atty. Clave; and
- (6) The amount of P257,400.00 stated in the Writ of Execution and the alias writ is not based on evidence presented, and consequently, the public respondents acted with grave abuse of discretion in granting that amount. The petitioner's records show that the amounts checked-off add up to only P155,800.00.

On November 23, 1987, this Court issued a temporary restraining order, enjoining the public respondents from enforcing all the assailed orders, writs of executions and notices of garnishment in BLR Case No. A-11-282-85 (NCR-LRD-M-7-275-85).^[1]

On the issue of jurisdiction, the Court finds that respondent Director has jurisdiction over the controversy. Under Article 241 of the Labor Code, the Bureau of Labor Relations has jurisdiction over cases of reported violations thereof and to mete the appropriate penalty in disputes between and among the union, its officers and members. The petition was for violation of said article which provides that "(n)o special assessment or other extra-ordinary fees may be levied upon the members of a labor organization unless authorized by a written resolution of a majority of all the members at a general membership meeting duly called for the purpose."^[2]

The principal relief sought in the case was for the nullification of Union Resolution No. 15-S-84. The inclusion of petitioner as a co-

respondent and the monetary claim against it is only incidental or ancillary to the principal relief and is a consequence of petitioner having acted as a collection agent of the respondent union officers. The action, therefore, is not essentially a money claim for underpayment of wages that would fall under the jurisdiction of the labor arbiter.^[3]

The next issue is whether or not petitioner was afforded due process. The original claim of private respondents was filed with the DOLE on July 11, 1985. Records of the BLR disclose that summons were served upon minor employees of the petitioner, the last being on September 9, 1985. There followed those abnormal times, the snap elections and the chaotic situation of the national elections culminating in the EDSA Revolution of 1986. We can take judicial notice that the political upheaval of 1986 affected the petitioner as a government-controlled corporation. There was a change of management. The defective service of summons prevented the pending case from being brought to the attention of petitioner's Legal Department. The eloquent non-appearance of petitioner in all the hearings establishing a money claim against it is an indication of lack of sufficient notice regarding the case. It came to know of the case only when the judgment against it was being executed.

Notice to enable the other party to be heard and to present evidence is not a mere technicality or a trivial matter in any administrative or judicial proceedings. The service of summons is a very vital and indispensable ingredient of due process.

In this case, the service of summons upon the minor subordinates of petitioner's Tollways Division is not valid and binding. Under Section 15, Rule 14 of the Rules of Court, service of summons upon public corporations must be made on its executive head or on such officer or officers as the law or the court may direct. Under Section 13 of the same Rule, service upon a private corporation may be made on the president, manager, secretary, cashier, agent or any of its directors.

The contention of public respondent is that petitioner had due notice and that technical rules are not binding in proceedings under the Labor Code.^[4] However, under Sections 4 of Rule IV of the Revised Rules of the NLRC, service summons must be made as follows:

“Section 4. Service of notices and resolutions. Notice of summons and copies of orders, resolutions or decisions shall be served personally by the bailiff or duly authorized public officer or by registered mail on the parties to the case; Provided, that where a party is represented by counsel or authorized representative, service shall be made on the latter.” (Emphasis supplied.)

and

“Section 5. Proof and completeness of service. The return is prima facie proof of the facts indicated therein Service by registered mails is complete upon receipt by the addressee or his agents.” (Emphasis supplied.)

To determine the scope or meaning of such authorized representative or agents of parties on whom summon served, the provisions of the Rules of Court should apply in a suppletory character.^[5]

Public respondents argue that as petitioner filed a motion for reconsideration of the order of respondent calling for the issuance of the writ of execution there was no denial of the opportunity to be heard. However, said motion was denied without even considering the merit of the same but on the technical ground that it was filed out of time. Accordingly thereby petitioner was denied due process.

Petitioner should be afforded its day in court. It must be given the opportunity to prove its contention that what was actually collected as check-off assessments from union members is only P155,800.00 and not P257,400.00 as assessed by public respondents. Its advance payments to the labor advocate must also be considered.

In sum, the Court holds that petitioner was not duly notified of the pending case because of defective service of summons. It was deprived of its right to be heard and to present evidence which are essential ingredients of due process of law.

WHEREFORE AND BY REASON OF THE FOREGOING, the restraining order issued by this Court in favor of petitioner is made

permanent, and all the assailed orders of October 14, 1985, June 30, 1986, November 5, 1986, September 12, 1987 and October 13, 1987, writs of execution and notices of garnishment in BLR Case No. A-11-282-85 (NCR-LRD-M-7-275-85) against petitioner only are **SET ASIDE** for being null and void.

This decision is immediately executory.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino and Medialdea, JJ., concur.

[1] Page 182, Rollo.

[2] Article 241, paragraph (n) of the Labor Code.

[3] Article 217, Labor Code.

[4] Article 221, Labor Code.

[5] Section 3, Rule 1, Revised Rules of the NLRC.