

THIRD DIVISION

[G.R. No. 192924, November 26, 2014]

PHILIPPINE AIRLINES, INC., PETITIONER, VS. REYNALDO V. PAZ, RESPONDENT.

DECISION

REYES, J.:

Before this Court is a petition for review on *certiorari*^[1] filed under Rule 45 of the Rules of Court by Philippine Airlines, Inc. (PAL), seeking to annul and set aside the Amended Decision^[2] dated June 29, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 75618.

Reynaldo V. Paz (respondent) was a former commercial pilot of PAL and a member of the Airlines Pilots Association of the Philippines (ALPAP), the sole and exclusive bargaining representative of all the pilots in PAL.

On December 9, 1997, ALPAP filed a notice of strike with the National Conciliation and Mediation Board of the Department of Labor and Employment (DOLE). Pursuant to Article 263(g) of the Labor Code, the DOLE Secretary assumed jurisdiction over the labor dispute and enjoined the parties from committing acts which will further exacerbate the situation.^[3]

On June 5, 1998, notwithstanding the directive of the DOLE Secretary, the ALPAP officers and members staged a strike and picketed at the PAL's premises. To control the situation, the DOLE Secretary issued a return-to-work order on June 7, 1998, directing all the striking officers and members of ALPAP to return to work within 24 hours from notice of the order. The said order was served upon the officers of ALPAP on June 8, 1998 by the DOLE Secretary himself. Even then, the striking members of ALPAP did not report for work.^[4]

On June 25, 1998, Atty. Joji Antonio, the counsel for ALPAP, informed the members of the union that she has just received a copy of the return-to-work order and that they have until the following day within which to comply. When the striking members of the ALPAP reported for work on the following day, the security guards of PAL denied them entry.^[5]

On June 13, 1998, the DOLE Secretary issued a resolution on the case from which both parties filed a motion for reconsideration. Pending the resolution of the motions, PAL filed a petition for approval of rehabilitation plan and for appointment of a rehabilitation receiver with the Securities and Exchange Commission (SEC), claiming serious financial distress brought about by the strike. Subsequently, on June 23, 1998, the SEC appointed a rehabilitation receiver for PAL and declared the suspension of all claims against it.^[6]

On June 1, 1999, the DOLE Secretary resolved the motions for reconsideration filed by both parties and declared the strike staged by ALPAP illegal and that the participants thereof are deemed to have lost their employment.^[7]

On June 25, 1999, the respondent filed a complaint for illegal dismissal against PAL for not accepting him back to work, claiming non-participation in the illegal strike. In his position paper, he alleged that on the day the ALPAP staged a strike on June 5, 1998, he was off-duty from work and was in Iligan City. However, when he reported back to work on June 12, 1998, after a week-long break, he was no longer allowed to enter PAL's premises in Nichols, Pasay City.^[8]

The respondent further alleged that on June 25, 1998, he learned that the DOLE Secretary issued a return-to-work order, requiring all the striking pilots to return to work within 24 hours from notice. Notwithstanding his non-participation in the strike, he signed the logbook at the entrance of PAL's office on the following day. When he tried to report for work, however, he was denied entry by the PAL's security guards.^[9]

For its part, PAL claimed that the respondent was among the participants of the strike staged by ALPAP on June 5, 1998 who did not heed to the return-to-work order issued on June 7, 1998 by the DOLE Secretary. The said order directed all the participants of the strike to return to work within 24 hours from notice thereof. However, ALPAP and its counsel unjustifiably refused to receive the copy of the order and was therefore deemed served. The 24-hour deadline for the pilots to return to work expired on June 9, 1998, without the respondent reporting back to work. Subsequently, the DOLE Secretary issued the Resolution dated June 1, 1999, declaring that the striking pilots have lost their employment for defying the return-to-work order. Thus, PAL argued that the respondent's charge of illegal dismissal is utterly without merit.^[10]

On March 5, 2001, the Labor Arbiter (LA) rendered a Decision,^[11] holding that the respondent was illegally dismissed and ordered that he be reinstated to his former position without loss of seniority rights and other privileges and paid his full backwages inclusive of allowances and other benefits computed from June 12, 1998 up to his actual reinstatement. The dispositive portion of the decision reads, as follows:

WHEREFORE, judgment is hereby rendered:

1. Declaring that this Arbitration Branch has jurisdiction over the causes of action raised by the [respondent] in this case;
2. Declaring that the causes of action raised in the complaint in this case have not been barred by prior judgment of the Secretary of Labor and Employment in his Resolution of June 1, 1999;
3. Declaring that the termination of the services of the [respondent] was not for any just or authorized cause and also without due process and therefore illegal;

4. Ordering Philippine Airlines, Inc. to reinstate immediately upon receipt of this decision [respondent] Reynaldo V. Paz to his former position as commercial pilot without loss of seniority rights and other privileges and to pay him his full backwages inclusive of allowances and other benefits or their monetary equivalent computed from June 12, 1998 up to his actual reinstatement even pending appeal but the respondent has the option to actually reinstate [the respondent] to his former position or to reinstate him merely in payroll. As of September 5, 2000, the full backwages due to the [respondent] total P2,629,420.00;

5. Ordering Philippine Airlines, Inc. to pay the [respondent] the following:

Productivity Pay (P22,383.62 x 27 months.....	P604,357.74
Retirement Fund Contribution (P9,800.00 x 27 months).....	264,600.00
PODF (P4,663.25 x 27 months).....	125,907.75
Sick Leave (P3,000.62 x 42 days).....	126,026.04
Vacation Leave (P3,000.62 x 42 days).....	125,026.04
Rice Subsidy (P600.00 x 27 months).....	16,200.00
13 th Month Pay (P93,265.00 x 2 years).....	188,030.00
Longevity Pay (P500.00 x 2 years)	1,000.00

6. Ordering Philippine Airlines, Inc. to pay [the respondent] attorney's fees equivalent to 10% of the whole monetary award (*Art. III, Labor Code*);

7. Ordering Philippine Airlines, Inc. to pay [the respondent] moral damages equivalent to Five Hundred Thousand Pesos (P500,000.00) and exemplary damages of Five Hundred Thousand Pesos (P500,000.00)

SO ORDERED.^[12]

Unyielding, PAL appealed the foregoing decision to the National Labor Relations Commission (NLRC). Pending appeal, the respondent filed a motion for partial execution of the reinstatement aspect of the decision. The LA granted the said motion and issued a partial writ of execution on May 25, 2001.

Subsequently, on June 27, 2001, the NLRC rendered a Resolution,^[13] reversing the LA decision. The NLRC ruled that the pieces of evidence presented by PAL proved that the respondent participated in the strike and defied the return-to-work order of

the DOLE Secretary; hence, he is deemed to have lost his employment. The pertinent portions of the decision read:

Indeed, other than [the respondent's] self-serving assertions, he has failed to substantiate his claim that he was in Iligan City and that he reported for work a week after June 5, 1998. [PAL], on the other hand, has presented photographs of the complainant picketing [at the PAL's] premises on June 15 & 26, 1998. x x x

x x x x

In sum, [PAL's] concrete evidence submitted in the proceedings below should prevail over the self-serving assertions of [the respondent]. Consequently, we are of the view that [PAL] acted within its rights when it refused to accept [the respondent] when he reported for work on June 26, 1998. This is consistent with the finding[s] of the DOLE Secretary when he declared the strikers to have lost their employment status. x x x.

x x x x

WHEREFORE, premises considered, the appeal is hereby GRANTED, and the decision dated March 5, 2001, is REVERSED and SET ASIDE for utter lack of merit.

SO ORDERED.^[14]

Notwithstanding the reversal of the LA decision, the respondent pursued his move for the issuance of a writ of execution, claiming that he was entitled to reinstatement salaries which he supposedly earned during the pendency of the appeal to the NLRC. On August 28, 2001, the LA granted the motion and issued the corresponding writ of execution.^[15]

On September 17, 2001, the LA issued an Order,^[16] clarifying the respondent's entitlement to reinstatement salaries. He ratiocinated that the order of reinstatement is immediately executory even pending appeal and that under Article 223 of the Labor Code, the employer has the option to admit the employee back to work or merely reinstate him in the payroll. Considering, however, that there was no physical reinstatement, the respondent, as a matter of right, must be reinstated in the payroll. The accrued salaries may now be the subject of execution despite the NLRC's reversal of the decision.

PAL appealed the LA Order dated September 17, 2001 to the NLRC, arguing that the writ of execution lacked factual and legal basis considering that the NLRC reversed and set aside the LA decision and categorically declared the order of reinstatement as totally devoid of merit. It contended that entitlement to salaries pending appeal presupposes a finding that the employee is entitled to reinstatement. Absent such finding, the employee is not entitled to reinstatement salaries and the writ of execution issued pursuant thereto is a complete nullity.^[17]

On June 28, 2002, the NLRC rendered a Resolution,^[18] sustaining the award of

reinstatement salaries to the respondent albeit suspending its execution in view of the fact that PAL was under rehabilitation receivership. PAL filed a motion for reconsideration but the NLRC denied the same in its Resolution^[19] dated November 22, 2002.

Unperturbed, PAL filed a petition for *certiorari* with the CA, questioning the NLRC Resolution dated June 28, 2002. Subsequently, in a Decision^[20] dated January 31, 2005, the CA affirmed with modification the NLRC Resolution dated June 28, 2002, the dispositive portion of which reads, as follows:

WHEREFORE, the NLRC Resolution dated June 28, 2002 is **AFFIRMED with the MODIFICATION** that, in lieu of reinstatement salaries, petitioner Philippine Airlines, Inc. is ordered to pay respondent Paz separation pay equivalent to one month salary for every year of service, to ***be computed from the time respondent commenced employment with petitioner PAL until the time the Labor Arbiter issued the writ ordering respondent's reinstatement, i.e., on May 25, 2001.***

SO ORDERED.^[21]

The CA ruled that while the respondent is entitled to reinstatement, the prevailing circumstances rendered the same difficult if not impossible to execute. It noted that at the time the reinstatement was ordered, there was no vacant B747-400 pilot position available for the respondent. Further complicating the situation is the fact that PAL has been under receivership since July 1998. Thus, in lieu of reinstatement salaries, the CA ordered PAL to pay the respondent separation pay equivalent to one (1) month salary for every year of service.^[22]

PAL filed a motion for reconsideration of the CA decision. Subsequently, the CA rendered the assailed Amended Decision^[23] dated June 29, 2010, holding thus:

Accordingly, compliance with the reinstatement order is not affected by the fact that private respondent's previous position had been filled-up. In reinstatement pending appeal, payroll reinstatement is an alternative to actual reinstatement. Hence, public respondent did not err when it upheld the Labor Arbiter that private respondent is entitled to reinstatement salaries during the period of appeal.

WHEREFORE, premises considered, the modification contained in Our January 31, 2005 Decision is DELETED and SET ASIDE. The June 28, 2002 Resolution of the National Labor Relations Commission is hereby REINSTATED in toto.

SO ORDERED.^[24]

On August 3, 2010, PAL filed the instant petition with the Court, contending that the CA acted in a manner contrary to law and jurisprudence when it upheld the award of reinstatement salaries to the respondent.^[25]

The petition is meritorious.