

SECOND DIVISION

[G.R. No. 180188, March 25, 2009]

**C-E CONSTRUCTION CORPORATION, PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION AND RAYMUNDO HERNANDEZ,
RESPONDENTS.**

D E C I S I O N

TINGA, J.:

Petitioner C-E Construction Corporation (petitioner) is a duly organized corporation primarily engaged in general contract construction. Petitioner employed respondent Raymundo Hernandez as an electrician and carpenter on January 17, 1996 for its Filinvest Festival Supermall project.

The employment contract executed between Hernandez and petitioner specifically provides that the former's employment is co-terminus with the project.

On December 17, 1996, petitioner dismissed Hernandez allegedly because the initial phase of the project had been completed.^[1] Hernandez immediately filed a complaint against petitioner for illegal dismissal, praying for reinstatement, backwages and attorney's fees.^[2] Petitioner disputed the claims of Hernandez, asserting that Hernandez was a project employee and his services were terminated since the phase of the Supermall project for which he was hired had been finished. Thus, there was no illegal dismissal to speak of.

On February 16, 1998, the labor arbiter rendered a decision declaring petitioner's dismissal as illegal and directed petitioner to reinstate petitioner to his former position, the dispositive portion of which reads:

WHEREFORE, premises all considered, judgment is hereby rendered ordering respondent C.E. Construction Corporation and Ambrosio Salazar to:

- (a) reinstate complainant, Raymundo Hernandez to his former position without loss of seniority rights;
- (b) pay complainant full backwages from the time he was illegally dismissed up to actual reinstatement which amounts to P56,833.29.
- (c) pay complainant moral damages by reason of the illegal dismissal in the amount of P50,000.00.
- (d) pay complainant attorney's fees in the amount of ten (10%) percent of the total award.

All other claims are dismissed for lack of merit.

SO ORDERED.^[3]

Petitioner appealed the decision of the Labor Arbiter to the NLRC. On September 8, 1998, the NLRC partially reversed the decision of the Labor Arbiter to the extent of deleting the award of moral damages and attorney's fees.^[4] CECC moved for reconsideration^[5] but this was denied by the NLRC.

In due time, petitioner filed a petition for certiorari with the Court of Appeals.^[6] The Court of Appeals denied the petition.^[7] The appellate court found that the record was bare of any evidence that the project's initial phase was completed. It concluded that petitioner had failed to discharge the burden to prove that there was valid cause for dismissing Hernandez. The appellate court also noted that petitioner had not given notice nor hearing to Hernandez.

Aggrieved, petitioner filed a petition for review on certiorari with this Court but this was denied in a resolution dated October 18, 2000 for failure to show reversible error.^[8] Petitioner moved for reconsideration but this was similarly denied by this Court in a resolution dated January 15, 2001 for lack of merit.^[9] The decision attained finality on February 9, 2001 and entry of judgment was made on July 27, 2001.

On February 26, 2001, Hernandez filed an omnibus motion for "re-computation" of judgment award and issuance of writ of execution with the labor arbiter.^[10] On January 28, 2002, the labor arbiter issued an order awarding Hernandez backwages.^[11] The computation set forth in the order is as follows:

As per decision P56,833.29

A) Additional Backwages

1. Basic Salary

2/16/98- 12/31/98=10.50		
P198 x 26 x 10.5	P54,054.00	
1/1/99- 10/30/99=10.00		
P223.50 x 26 x 10.00	58,110.00	
10/31/99- 3/30/01=20.97		
P250 x 26 x 20.97	136,305.00	248,469.00

13th mo pay

P 248,469.00/12

20,705.75

2. SILP

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2/16/98- 12/31/98=10.50		
P198 x 5 x 10.5/12	P866.25	
1/1/99-12/31/99=12		
P223.50 x 5 x 12/12	1,117.50	
1/1/00-12/31/00=3		
P250 x 5 x 12/12	1,1250.00	
1/1/01-3/30/01=3		
250 X 5 X 3/12	312.50	3,546.25

Total

P 329,554.29

Petitioner appealed the 2002 order to the NLRC. Petitioner claimed that the wages that Hernandez could have possibly earned during the pendency of the case should be deducted from the calculation of the backwages. Moreover, petitioner asserted that it had not been furnished with any writ of execution reinstating Hernandez; hence, it was not legally bound to pay the latter backwages. Petitioner also argued that backwages should only cover the period of the project where Hernandez was engaged to work and not include the period after the completion of the project.

Unimpressed by petitioner's arguments, the NLRC affirmed the decision of the Labor Arbiter on September 23, 2002.^[12] Petitioner moved for reconsideration but this was also denied by the NLRC on November 30, 2004.^[13] After the NLRC denied its motion for reconsideration, petitioner filed a petition for certiorari^[14] with the appellate court reiterating the arguments it raised before the NLRC. On February 28, 2006, the appellate court dismissed the petition for lack of merit. The appellate court pointed out that petitioner's argument regarding the correctness of the computation of backwages is a factual question that is not a proper subject of a petition for *certiorari*.^[15] The appellate court stressed that there was nothing both in the NLRC's or labor arbiter's decisions that would indicate grave abuse of discretion on their part.

Hence, the instant petition. Abandoning its earlier posture that the wages Hernandez could have earned should be excluded and that backwages are not demandable since no order of execution was served on CECC, petitioner focuses on its submission that the backwages of Hernandez as an illegally dismissed project employee should cover only the unexpired portion of the project he was engaged in.

For his part, Hernandez asserts that petitioner maliciously failed to mention that both the NLRC and the labor arbiter found that he was a regular employee.

The petition lacks merit.

We disfavor delay in the enforcement of the labor arbiter's decision. Once a judgment becomes final and executory, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Final and executory judgments can neither be amended nor altered except for correction of clerical errors, even if the purpose is to correct erroneous conclusions of fact or of law.^[16] Trial and execution proceedings constitute one whole action or suit such that a case in which execution has been issued is regarded as still pending so that all proceedings in the execution are proceedings in the suit.^[17]