

## FIRST DIVISION

[ G.R. No. 117742, July 29, 1997 ]

### **GEORGE M. TABERRAH, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, CALTEX (PHIL.), INC., AND WILLIAM TIFFANY, RESPONDENTS.**

#### **D E C I S I O N**

##### **BELLOSILLO, J.:**

GEORGE M. TABERRAH was the Senior Manager of the Supply and Distribution Department, CALTEX PHILIPPINES, INC. (CALTEX, for brevity). He worked for the company for nineteen (19) years starting 1974 until his dismissal in 1993.

On 9 November 1992, while TABERRAH was on his annual vacation leave, an anonymous letter authored by a certain "Mr. Caltexman" was circulated containing malicious imputations against TABERRAH attacking his personal life and accusing him of contracting certain anomalous transactions and other irregularities in the company.<sup>[1]</sup> In view of the gravity of the accusations, CALTEX convened a fact-finding committee to ferret out the truth. On 25 January 1993 TABERRAH was informed of the charges against him by furnishing him a memorandum of the results of the fact-finding investigation. He was simultaneously placed under preventive suspension and required to submit a written explanation within seventy-two (72) hours from receipt of the memorandum.<sup>[2]</sup> CALTEX subsequently notified him that a formal investigation would be conducted on 10 February 1993 and advised him to seek the assistance of counsel.<sup>[3]</sup>

TABERRAH informed CALTEX that he was not attending the scheduled investigation and that he had already filed a complaint for illegal suspension and illegal dismissal with claim for moral and exemplary damages plus attorney's fees before the Labor Arbiter. According to TABERRAH the formal investigation was a mere afterthought and part of a grand design to justify the constructive termination of his employment.<sup>[4]</sup>

Nonetheless a formal investigation proceeded as scheduled in the absence of TABERRAH after which an ex parte ruling was issued dismissing him on the ground of breach of trust and loss of confidence.

After the parties submitted their respective position papers, reply, rejoinder and other subsequent pleadings pertinent to the complaint filed by TABERRAH, Labor Arbiter Eduardo J. Carpio, "finding no necessity to try the case on the merits," ordered the parties instead to file their respective memoranda within twenty (20) days from receipt thereof after which the case would be deemed submitted for decision.

Respondent CALTEX moved for reconsideration contending that there remained

material disputes and inconsistencies in the facts presented by the parties hence the proper resolution could best be made only through a trial on the merits where the parties could be afforded full opportunity to present their evidence.<sup>[5]</sup>

The Labor Arbiter denied the motion and decided the case on the basis of the pleadings and other documentary evidence submitted by the parties.<sup>[6]</sup> The dispositive portion of his decision reads:

WHEREFORE, finding the dismissal of complainant George Taberrah to be without just cause and in violation of his right to due process, effected with malice, bad faith and ill will, respondent Caltex Philippines, Inc., is hereby ordered to reinstate complainant immediately to his former position with full back wages, without loss of seniority rights and other benefits and privileges attendant therewith, and pay complainant moral damages in the amount of 5 Million and exemplary damages in the amount of P2 Million and the equivalent of 10% of the total award as attorney's fees.

On 22 February 1994 respondent CALTEX elevated the case to the NLRC. But instead of posting an appeal bond, it attached to its Memorandum of Appeal a Motion to Fix Appeal Bond alleging that the Labor Arbiter's decision did not contain a computation of the award. On 25 March 1994 NLRC issued an Order fixing the appeal bond and allowing CALTEX an additional period of ten (10) days from receipt of the said Order to post the required bond. Respondent received the Order on 5 April 1994 and posted the required bond on 13 April 1994.

In the meantime, TABERRAH filed with the NLRC several motions for execution of the decision of the Labor Arbiter pursuant to Art. 223 of the Labor Code which mandates that the reinstatement aspect of the decision shall be immediately executory. The NLRC refused to act on said motions claiming that it is an appellate body with no power to issue writs of execution.

On 12 July 1994 the NLRC reversed the decision of the Labor Arbiter and dismissed the complaint. Hence, the instant petition.

Petitioner contends that respondent NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction (1) when it refused to allow the issuance of a writ of execution on the reinstatement aspect of the decision of the Labor Arbiter pending appeal; (2) when it sustained the position of respondent company that it was denied due process when the Labor Arbiter decided the case on the basis of the pleadings without trial on the merits; (3) when it allowed respondent company an extension of the period within which to perfect the appeal; and, (4) when it reversed the decision of the Labor Arbiter.

Article 223, third par., of the Labor Code provides -

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, in so far as the reinstatement aspect is concerned, shall be immediately executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the

employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

Under Rule V, third par., of Sec. 16 of the Rules Implementing the Labor Code -

In case the decision includes an order of reinstatement, the Labor Arbiter shall direct the employer to immediately reinstate the dismissed or separated employee even pending appeal. The order of reinstatement shall indicate that the employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal, or separation or at the option of the employer, merely reinstated in the payroll.

It is clear from the foregoing that it is the Labor Arbiter - not the NLRC - who has the authority to issue the writ of execution of the reinstatement aspect of the decision even if the case is already pending appeal. Since it was the Labor Arbiter who issued the decision sought to be executed, the motion for execution should also be filed with the Labor Arbiter.<sup>[7]</sup> Furthermore, as correctly ruled by respondent NLRC, appellate courts cannot by themselves issue a writ of execution but that the same may only be issued by the hearing officer of the court of origin. In this regard, however, to obviate delay, the NLRC should have forthwith directed the Labor Arbiter to issue the corresponding writ prayed for.

On the second issue, the following are the pertinent provisions of the Rules Implementing the Labor Code relative to proceedings before the Labor Arbiter -

*SECTION 4. DETERMINATION OF NECESSITY OF HEARING.* - Immediately after the submission by the parties of their position papers/memoranda, the Labor Arbiter shall motu proprio determine whether there is a need for a formal trial or hearing. At this stage, he may at his discretion and for the purpose of making such determination ask clarificatory questions to further elicit facts or information including but not limited to the subpoena of relevant documentary evidence, if any, from any party or witness.

*SECTION 5. PERIOD TO DECIDE CASES.* - x x x x (b) If the Labor Arbiter finds no necessity of further hearing after the parties have submitted their position papers and supporting documents, he shall issue an order to that effect and shall inform the parties, stating the reasons therefor. In any event, he shall render his decision in the case within the same period provided in paragraph (a) hereof.

The Labor Arbiter enjoys wide discretion in determining whether there is need for a formal hearing in a given case. If in his opinion there is no necessity for a formal hearing he may decide the case on the basis of the pleadings and other documentary evidence presented by the parties. This is in consonance with Art. 221 of the Labor Code according to which technical rules of evidence prevailing in courts of law or equity shall not be controlling in any proceeding before the Labor Arbiter or the Commission, subject to the requirements of due process. The Labor Arbiter shall use all reasonable means to ascertain the facts of each case without regard to technicalities. In the absence of clear abuse of discretion on the part of the Labor Arbiter, the NLRC must respect the method adopted by him in deciding cases.

Moreover, a formal or trial-type hearing is not at all times and in all instances essential to due process the requirements of which are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy. Thus, the NLRC committed grave abuse of discretion when it ruled that respondent CALTEX was denied due process where the records show that in response to petitioner's complaint and before the Labor Arbiter rendered his decision, respondent company submitted a position paper, complete with annexes where they set out and argued the factual as well as the legal basis of its position.<sup>[8]</sup>

On the third issue, petitioner postulates that the appeal of respondent CALTEX to the NLRC was not perfected seasonably as the posting of the appeal bond within the reglementary period is a mandatory requirement for the perfection of the appeal. Respondent CALTEX, on the other hand, argues that there being no computation in the decision of the Labor Arbiter of the actual amount of back wages which was the basis of the appeal bond, the appeal it filed was duly perfected when it manifested its readiness and willingness to post such bond upon the proper computation of the back wages.

We sustain respondent CALTEX on this score. In *National Federation of Labor Unions v. Ladrido III*,<sup>[9]</sup> a similar problem confronted this Court. In that case, the Labor Arbiter's decision did not contain a computation of the monetary award. When the employer failed to file the necessary cash or surety bond within the period for appeal, the employees sought to execute the decision, which the Labor Arbiter granted. It appears that the employer filed a Memorandum of Appeal (within the reglementary period) stating, among others, that the bond could not be posted on time because the amount of the monetary award was still being computed by the Corporate Auditing Examiner. The Court made the following pronouncement:

The labor arbiter clearly erred in issuing a writ of execution on July 5, 1990. In said order, the arbiter observed that private respondents "have not as yet perfected their appeal for failure to post cash bond or surety bond," implying that the decision appealed from has become final, thus entitling petitioner to the issuance of the writ of execution. But precisely, as contended by private respondents, "the computation of the corporate auditing examiner was not attached to the decision." Private respondents cannot be expected to post such appeal bond equivalent to the amount of the monetary award when the amount thereof was not included in the decision of the labor arbiter. Article 223 of the Labor Code xxx presupposes that the amount of the monetary award is stated in the judgment or at least attached to the judgment.

x x x

In the order of public respondent NLRC dated 10 August 1990, it is stated that "the policy of the Commission in situations like this (and the labor arbiter should have been aware of this) is for the labor arbiter to forward the records to the Commission [and that] thereafter, the Commission will cause the computation of the awards and issue an order directing the appellant to file the required bond." This appears to be a practice of the NLRC to allow a belated filing of the required appeal bond, in the instance when the decision of the labor arbiter involves a monetary award that has not yet been computed, considering that the computation will still