SUPREME COURT
FIRST DIVISION

BIONIC HEAVY EQUIPMENTS, INC., and/or MR. SPENCER FORKNER,
***Petitioner*,**

-versus-

G.R. No. 120691
August 21, 1997

NATIONAL LABOR RELATIONS COMMISSION (Fourth Division, Cebu City) and NAFLU/AMIE TOMENTOS, et al.,
***Respondents*.**
x----------x

D E C I S I O N

KAPUNAN, *J.*:

The instant case is an off-shoot of the decision of this Court in National Federation of Labor Unions vs. Ladrido III, docketed as G.R. No. 94540-41. 1 The factual antecedents leading to the dispute now before us are laid down in the NAFLU case, as follows:

On December 1, 1989, then labor arbiter Jose G. Gutierrez rendered a decision in favor of the complainants in consolidated cases filed by the National Federation of Labor Unions and others against private respondent Bionic Heavy Equipment, Inc. and Mr. Spencer Forkner,

docketed as RAB-VII-015-86-D and RAB-VII-020-87-20 dated December 1, 1989, the dispositive part of which reads as follows:

> 'WHEREFORE, premises considered, this Office gives due course to complainants' claim, ordering respondent to pay the complainants:
>
> 1) separation pay at the rate of one (1) month for every year of service
>
> 2) ECOLA
>
> 3) service incentive leave
>
> 4) 13th month pay
>
> 5) overtime pay and night shift differentials
>
> 6) premium pay on holidays and rest days
>
> 7) 3 years backwages without deduction and qualifications.
>
> All other claims are hereby denied for lack of merit.
>
> The Corporate Auditing Examiner is hereby ordered to compute the foregoing monetary awards which form part of this decision.
>
> SO ORDERED.'

A copy of the decision was received by private respondent on January 23, 1990. On February 2, 1990, within the ten-day reglementary period, an appeal memorandum was filed by private respondents stating, among others, that the amount of the monetary award is still being computed by the corporate auditing examiner. Petitioners filed an opposition thereto alleging that the appeal has not been perfected for failure to file the necessary cash or surety bond and that the appeal is pro-forma. Replying thereto, private respondents reiterated that no bond was posted as there was no computation attached to the decision and that accordingly, the amount of the bond cannot be

determined. In a supplemental appeal dated March 30, 1990 respondents stressed that the decision is not based on substantial evidence.

On June 21, 1990, petitioner filed a motion for immediate issuance of a writ of execution alleging therein that the computation of the award had been accomplished; that the private respondents failed to perfect their appeal; and that private respondents are in imminent danger of insolvency. The motion was granted by labor arbiter Geofrey P. Villahermosa in an order dated June 27, 1990. A hearing was thus scheduled on June 30, 1990. On June 30, 1990, after the hearing, the labor arbiter approved and adopted the computation of awards made by the corporate auditing examiner, SLEO Aurora R. Gorres, in the total amount of P21,415,486.00.

On July 2, 1990, private respondents filed their comment to the motion for issuance of a writ of execution alleging therein that the said motion is premature and that the allegation of insolvency is baseless.

On July 5, 1990, the labor arbiter issued a special order for the issuance of a writ of execution based on the following reasons —

> '1. Execution pending appeal is allowed under Sec. 2, Rule 39 of the Revised Rules of Court of the Philippines;
>
> 2. Respondents herein have not as yet perfected their appeal for failure to post cash or surety bond;
>
> 3. Respondent were furnished in open session last June 30, 1990 an official copy of the computation of monetary awards due the complainants;
>
> 4. Respondents did not file an opposition to complainants' motion for immediate issuance of writ of execution;
>
> 5. Respondents' counsel in open session made an admission that respondents indeed have partially discontinued its (sic) operation;

6. This office is of the view that the appeal by respondents is being taken for purposes of delaying the execution of the judgment;

7. Complainants herein would be gravely prejudiced in that respondents have started removing, dismantling and disposing of their equipment and other accessories subject for execution;

8. The judgment rendered herein will be rendered nugatory and ineffectual if not defeated, if no writ of execution is immediately issued by this Office.'

On the same day said arbiter issued the writ of execution a copy of which was served on private respondents on July 6, 1990 by the sheriff. On July 12, 1990, private respondents filed a motion to lift the writ of execution and for recomputation of the award on the ground that the appeal has been perfected and private respondents were not given an opportunity to controvert the award. The Provincial Sheriff was informed thereof and was advised to hold in abeyance the execution of the decision.

Nevertheless, on July 13, 1990 the sheriff posted a notice of public auction sale to be held on July 19, 1990 at 9:00 a.m. to 5:00 p.m. of the properties enumerated in Annexes A and B of the notice. Two other notices of sale of personal properties of private respondents listed were issued by the sheriff for July 25, 1990. A notice of levy on execution of certain personal properties of private respondents was effected by the sheriff on July 17, 1990.

On July 18, 1990, the labor arbiter denied private respondents' urgent motion to lift the writ of execution and for recomputation of awards on the ground that the decision had become final and executory and that assuming that private respondents' appeal has not been perfected pending service of the computation of the monetary awards, respondents should have posted the cash or surety bond after receiving a copy of said recomputation on June 30, 1990.

On July 18, 1990, private respondents learned that the public auction of their property scheduled on July 19, 1990 will proceed. Thus, on

the same day, they filed with the public respondent National Labor Relations Commission (NLRC) a petition to stay the execution sale and for quashal of the writ of execution issued on July 5, 1990. On the same day the NLRC issued an order restraining the scheduled execution sale for July 19, 1990 but the levy on the properties will remain and private respondents were required to post a bond in the amount of P100,000.00 to answer for any damages complainants might suffer by virtue of the stay of the execution sale, if the petition is found to be without legal or factual basis. Private respondents promptly posted the bond and the labor arbiter was required to immediately forward the records of the case to the NLRC.

The Provincial Sheriff, however, effected the sale of properties for P3,696,850.00 claiming he received the radio message after the auction sale was conducted. The two other auction sale scheduled for July 25, 1990 were canceled.

On July 22, 1990, private respondents filed an urgent ex-parte motion to invalidate the auction sale conducted on July 19, 1990. The said motion was supported by affidavits, minutes and the report of the sheriff, all showing alleged irregularities in the conduct of the auction sale. On July 30, 1990, petitioners filed an opposition to the petition alleging therein that the NLRC has no jurisdiction over the injunction case, that there is no cause of action, that it is barred by prior final judgment and that it is frivolous.

On August 10, 1990 the NLRC issued an order quashing the writ of execution issued in this case, vacating and setting it aside, and ordering the return of the properties sold or taken from the premises of private respondents which, however, are to remain in custodia legis until the Commission can determine the amount of the bond to be posted by private respondents.[2]

NAFLU thus filed before this Court a petition for certiorari and prohibition assailing the August 10, 1990 Order, docketed as G.R. No. 94540-41, raising the following grounds:

A. NLRC ERRED IN ACQUIRING JURISDICTION OVER INJUNCTION CASES NO. V-0005-90 AND V-006-90 AND IN GIVING DUE COURSE TO INJUNCTION CASES BY

ISSUING A RESTRAINING ORDER DATED July 19, 1990, (ANNEX "N") ENJOINING EXECUTION SALE SCHEDULED ON July 19, 1990.

B. NLRC ERRED IN PROMULGATING THE ORDER DATED August 10, 1990 (ANNEX "R") WITHOUT HEARING DECLARING RESPONDENTS' APPEAL WITHOUT BOND AS DULY PERFECTED, DECLARING WRIT OF EXECUTION DULY ISSUED BY LABOR ARBITER WHO HAD JURISDICTION TO ISSUE SUCH WRIT AS QUASHED, VACATED AND SET ASIDE; DECLARING VALID AND DUE LEVY OF EXECUTION AND REGULAR SUBSEQUENT SALE OF PROPERTY PURSUANT TO SAID WRIT AS SET ASIDE AND ANNULLED; ORDERING RETURN TO PREMISES OF PROPERTIES SOLD AND ALREADY IN THE HANDS OF THIRD PERSONS AND TAKEN THEREFROM UNDER CUSTODIA LEGIS UNTIL AFTER AMOUNT OF BOND REQUIRED TO BE POSTED CAN BE DETERMINED WHICH AMOUNT IS ALREADY DETERMINED BY LAW (Article 223, paragraph 2 of the Labor Code as amended), THAT IS, SUCH BOND EQUIVALENT TO MONETARY AWARD.[3]

On May 8, 1991, the Court rendered a Decision dismissing the petition. The Court ordered the NLRC to "pass upon the merits of the appeal [of Bionic] and the correctness of the award."[4]

In compliance with this Court's directive, the NLRC resolved Bionic's appeal, and in a Decision dated August 14, 1991, ruled:

> WHEREFORE, in view of all the foregoing, the decision appealed from is VACATED and SET ASIDE.
>
> This case is REMANDED to the Labor Arbiter for further proceedings in accordance with our directive herein.
>
> Parties and counsels are enjoined to assist the Labor Arbiter in the speedy disposition of their case.[5]

While hearings were being conducted by the Labor Arbiter, Bionic filed a motion to release its surety bond, which motion was granted in an Order dated June 4, 1992, citing the dismissal of G.R. No. 94540-41 and that no claim on the bond was filed.[6]

Later, Bionic filed a motion for the release of the proceeds of the sale conducted by the Provincial Sheriff on July 19, 1990 on the ground that the sale was nullified by the NLRC in its Order dated August 10, 1990. Labor Arbiter Villahermosa granted the motion in an Order dated May 18, 1993.[7]

NAFLU filed with the NLRC an appeal from the May 18, 1993 Order. In a Resolution dated September 26, 1994, the NLRC ruled on NAFLU's appeal thus:

> WHEREFORE, the Order in question is hereby SET ASIDE not for the reasons stated in the appeal of the complainants, but because of the aforesaid Order of this Commission dated August 10, 1990.
>
> Further, the Labor Arbiter is hereby directed to immediately terminate the hearing of this case as ordered in the Decision of this Commission promulgated on August 14, 1991, so that the amount of the bond can be fixed in accordance with the monetary awards to be rendered by the Labor Arbiter below.[8]

The motion for reconsideration filed by Bionic was denied by the NLRC in a Resolution dated on February 21, 1995.[9]

Hence, the instant petition. Petitioner Bionic contends that:

> IT IS ERROR OF THE PUBLIC RESPONDENT NLRC TO FIND THAT THE PROCEEDS OF THE AUCTION SALE SHOULD REMAIN IN CUSTODIA LEGIS IN ACCORDANCE WITH ITS AUGUST 10, 1990 ORDER.
>
> THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DIRECTED THE LABOR ARBITER TO IMMEDIATELY TERMINATE THE HEARING OF THE

> INSTANT CONSOLIDATED CASES SO THAT THE AMOUNT OF THE BOND CAN BE FIXED IN ACCORDANCE WITH THE MONETARY AWARDS TO BE RENDERED BY THE LABOR ARBITER.[10]

The Solicitor General filed a Manifestation and Motion in Lieu of Comment with the prayer that the petition be given due course and that the assailed resolutions of the NLRC be set aside.

In a Resolution dated January 12, 1997, the Court resolved to give due course to the petition.

The core issue in the instant case is whether or not the proceeds of the sale can remain in *custodia legis*.

We rule in the negative.

In the assailed resolution, it is stated that "it is clear from the Order of this Commission dated August 10, 1990 that the properties sold or taken from the premises of the respondents on July 19, 1990 should remain in custodia legis until this Commission can determine the amount of the bond to be posted by the respondents."[11] In its Comment, the NLRC asserts that "the placing of the proceeds of the auction sale in custodia legis was obviously in lieu of the bond required for the perfection of an appeal for the time being that the bond required to be posted by [Bionic] cannot yet be determined."[12]

The bond referred to in the August 10, 1990 Order is the appeal bond, which Bionic was to file on appeal to the NLRC from the December 1, 1989 Decision of the labor arbiter in RAB-VII-015-86-D and RAB-VII-020-87-20.

But the appeal bond has since lost its raison d'etre. Bionic's appeal was eventually resolved by the NLRC in its Decision dated August 14, 1991 and the cases remanded to the labor arbiter for further proceedings, in particular, on the following matters:

> "This being the case, it is but equitable that respondent be allowed to present evidence, especially the average number of cubic meters produced in a year so that the average earnings of

each worker can be determined. Then also because the complainants are engaged on 'pakiao' basis, the provisions of Article 82 of the Labor Code and Section 2 (e), Rule III of the Implementing Rule thereof will have to be applied. Thus, complainants are not entitled to service incentive leave pay, overtime pay, premium pay on holidays, and rest days.

Without ascertaining the above factual circumstances, there can be no definite ruling on the individual claims of the complainants herein, despite our finding that there is employer-employee relationship existing between complainants and BIONIC and that complainants are not employees of independent contractors. What needs to be done is the presentation of evidence to show the length of service of each complainant and the work he was performing for BIONIC. The general allegations of the complainants having been controverted, the Labor Arbiter is duty bound to conduct the necessary proceeding to ascertain the truth behind the allegations of the parties.

In fine, the Commission is of the view that the defense of Bionic that is has independent contractors or that it buys silicon quartz from vendors is not tenable in the case at bar. The workers at the mine are employees of BIONIC. What is left for the Labor Arbiter to determine is whether or not complainants herein really worked for BIONIC in its operations. Then, the Labor Arbiter should receive evidence on the amount and basis of the 'pakiaw' rate that was paid and the average annual production of BIONIC. Evidence must also be received to determine in what phase of work each complainant was involved. After all of the foregoing shall have been accomplished, it should be easy to determine whether or not the termination of employment is illegal and the computation of the appropriate backwages and separation pay can be made if these are the appropriate reliefs."[13]

It is during the proceedings before the labor arbiter that Bionic sought the return of its properties. As pointed out by the Solicitor General, "the proceedings before the Regional Arbitration Branch of Dumaguete City is a continuation or re-opening of the previous

proceedings amounting to a new trial on the merits of the case."[14] At the time the assailed resolution was issued, there was as yet no final judgment.

Furthermore, in the August 10, 1990 Order, the writ by virtue of which the properties were sold was quashed and the levy of execution and subsequent sale of the properties pursuant to the writ set aside and annulled.[15] A thing is said to be in *custodia legis* when it is shown that it has been and is subjected to the official custody of a judicial officer in pursuance of his execution of a legal writ.[16] There is no legal writ to speak of here. As the Court ruled in the NAFLU case affirming the NLRC's August 10, 1990 Order, "the labor arbiter clearly erred in issuing a writ of execution on July 5, 1990." Notably, it was only through the Provincial Sheriff's failure to receive notice of the NLRC's order restraining the auction sale that Bionic's properties were inadvertently sold on July 19, 1990.

We also find grave abuse in the NLRC's directive to the labor arbiter "to immediately terminate the hearing of this case so that the amount of the bond can be fixed in accordance with the monetary awards to be rendered by the Labor Arbiter below." This directive of the NLRC presumes that a final monetary award will be rendered by the labor arbiter for which Bionic would be liable, and that Bionic will thereafter file its appeal for which it would be required to file an appeal bond. Such presumption is clearly baseless.

The reception of evidence of the parties is imperative in the resolution of the issues pending before the labor arbiter, and to terminate the proceedings would be to deny the parties the venue within which to prove their respective cases. We point out that the NLRC, ruling on Bionic's appeal from the labor arbiter's December 1, 1989 decision, said that "we can neither affirm nor reverse the award of backwages, separation pay and 13th month pay, unless the Commission will simply rely on guesswork and speculations." Without the parties' presentation of evidence, the labor arbiter would not have any substantial basis upon which to base his decision on the merits of the case.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated September 26, 1994 and February 21, 1995 of the National Labor

Relations Commission are **SET ASIDE**, and the Order dated May 18, 1993 of Labor Arbiter Geoffrey P. Villahermosa in RAB-VII-015-86-D/020-86-D is **REINSTATED**. The labor arbiter is **DIRECTED** to proceed with the resolution of the case with dispatch.

SO ORDERED.

Padilla, Bellosillo, Vitug and Hermosisima, Jr., *JJ.*, concur.

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[1] 196 SCRA 833 [1992].
[2] Rollo, pp. 295-301; G.R. No. 94540-41.
[3] Id., at 13.
[4] Id., at 310.
[5] Rollo, G.R. No. 120691, .p 4 & p. 71.
[6] Id., at 18.
[7] Id., at 20.
[8] Id., at 24.
[9] Id., at 33.
[10] Id., at 9 and 12.
[11] Id., at 10.
[12] Id., at 105.
[13] Id., at 4-5.
[14] See note 5, p. 76.
[15] See note 2, p. 143.
[16] Tamisin vs. Odejar, 108 Phil. 560 [1960].
