SUPREME COURT
THIRD DIVISION

VIRGILIO CALLANTA,
***Petitioner*,**

-versus-

G.R. No. 105083
August 20, 1993

NATIONAL LABOR RELATIONS COMMISSION, DISTILLERIA LIMTUACO CO., INC. AND/OR JULIUS T. LIMPE, AS PRESIDENT AND GENERAL MANAGER,
***Respondents*.**
x----------x

D E C I S I O N

BIDIN, *J.*:

In this Petition for *Certiorari*, petitioner Virgilio Callanta seeks the annulment or setting aside of the decision of public respondent National Labor Relations Commission (NLRC) dated September 10, 1991 which reversed the finding of illegal dismissal and order of reinstatement with backwages by the Executive Labor Arbiter Zosimo T. Vasallo.

The undisputed facts are as follows:

From June 18, 1986 to December 31, 1986, petitioner was appointed as sub-agent by respondent company under the supervision of Edgar Rodriguez with specific assignment at Iligan City and Lanao Province.

In October of 1986, or before the expiration of his appointment, petitioner was promoted to the position of national promoter salesman of respondent company for Iligan City, Lanao del Norte and Lanao del Sur (Rollo, p. 29). On 28 April 1987, however, a "spot audit" was conducted and petitioner was found to have a tentative shortage in the amount of P49,005.59 (Rollo, p. 30).

On 30 April 1987, petitioner tendered his resignation to private respondent Julius T. Limpe, effective on the same date. The petitioner's resignation letter is herein quoted in toto:

> "April 30, 1987
>
> MR. JULIUS T. LIMPE
> President & Gen. Manager
> Distilleria Limtuaco & Co., Inc.
> 1830 EDSA, Quezon City
>
> "Dear Sir:
>
> "I have the honor to render (sic) my resignation as National Promoter Salesman effective April 30, 1987.
>
> "I take this opportunity to thank you for the invaluable experience I gained during my stay here. As I leave, I take such experience as a stepping stone in pursuing greener pasture with the same honesty and integrity I have displayed in the performance of my duties while in your employ.
>
> "Rest assured that if problem arise (sic) in the future I shall be happy to assist in any way I can.
>
> "Respectfully yours,
> "(SGD.) VIRGILIO CALLANTA"

Seven months thereafter, petitioner wrote a letter to private respondent Limpe complaining about his false resignation and demanding for the refund of the amount of P76,465.81 as well as reinstatement to his former position.

Respondent company ignored the above demands and on March 21, 1988, petitioner filed a complaint against respondent company before the NLRC Regional Arbitration Branch No. X for illegal dismissal, unpaid commission and receivable and/or claims due, non-payment of vacation leaves, holiday pays, 13th month pay, COLA and other company benefits and damages (Rollo, p. 4).

On the basis of the position papers submitted by the parties, the Labor Arbiter rendered a decision declaring the termination of petitioner's services illegal. The dispositive portion of the decision reads:

> "IN VIEW OF THE FOREGOING, judgment is hereby entered declaring the termination of complainant by respondent as illegal and ordering respondent to immediately reinstate complainant to his former position as National Promoter Salesman with backwages from the time of his dismissal until actually reinstated plus other benefits which he is supposed to be entitled to had he not been unlawfully dismissed.
>
> "Ordering respondent to pay and/or refund to complainant the sum of P76,893.42 as per audit finding of respondent and to pay an amount equivalent to 10% of the aggregate award as attorney's fee, plus the sum of P10,000.00 as the allowance still due to complainant as discussed above.
>
> "All the other claims are hereby dismissed for lack of merit.
>
> "SO ORDERED." (Rollo, p. 21.)

Aggrieved by the decision, respondent company appealed the same to the Fifth Division of the NLRC in Cagayan de Oro City on March 20, 1989. On October 16, 1989 respondent NLRC issued an order requiring private respondent company as appellant therein, to post a cash or surety bond in the amount equal to the monetary award in the

Labor Arbiter's judgment. Pursuant to the provisions of the then newly promulgated Republic At No. 6715, the NLRC also ordered immediate reinstatement of petitioner to his former position either physically or in the payroll, at the option of respondent company. Two (2) months from the date of the Order, private respondent filed the required bond but did not reinstate petitioner.

Meanwhile, petitioner filed with respondent NLRC a Motion for Writ of Execution pending appeal dated November 22, 1990 praying for the immediate execution of the reinstatement aspect of the Labor Arbiter's decision in accordance with the October 16, 1989 Order of the NLRC as well as Article 223 of the Labor Code as amended by R.A. 6715. The motion for writ of execution was not acted upon up to the time when public respondent NLRC decided the appeal on September 10, 1991, which as aforesaid, set aside the decision of the Labor Arbiter and dismissed the complaint of petitioner for lack of merit.

Petitioner now comes to this Court by way of special civil action of *certiorari* praying for the nullification of the Decision of public respondent anchored on the following grounds:

I

> "THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION ACTED WITHOUT JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION WHEN IT DID NOT CONSIDER AND GIVE DUE COURSE TO THE MOTION FOR WRIT OF EXECUTION FOR IMMEDIATE REINSTATEMENT OF PETITIONER BY RESPONDENT.

II

> "THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION ACTED WITHOUT JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT THE ALLEGED RESIGNATION LETTER OF COMPLAINANT WAS VALID AND EFFECTIVE CONTRARY TO THE FINDINGS OF THE LABOR ARBITER THAT THE SAME WAS FORCED UPON COMPLAINANT.

III

> "THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION ACTED WITHOUT JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION WHEN IT FAILED TO CONSIDER THAT COMPLAINANT IS STILL ENTITLED TO THE PAYMENT AND/OR REFUND OF P76,893.42 AS PER AUDIT FINDING OF RESPONDENT COMPANY'S AUDITOR PLUS THE SUM OF P10,000.00 AS ALLOWANCE STILL DUE TO COMPLAINANT." (Rollo, p. 6.)

To resolve the first issue raised by petitioner, it is imperative to note the dates involved in the present case in order to determine whether petitioner was entitled to the immediate execution of the reinstatement aspect of the Labor Arbiter's decision.

As borne by the records, the Labor Arbiter rendered his decision in favor of petitioner on February 16, 1989. Private respondent, on the other hand, filed its appeal on March 20, 1989. Ironically, Republic Act No. 6715, which granted the right to immediate reinstatement under Section 12 thereof amending Article 223 of the Labor Code, became effective on March 21, 1989, or the day after the appeal was filed by private respondent company. Meanwhile, the NLRC Interim Rules on Appeal under Republic Act No. 6715 became effective on September 5, 1989.

Given this factual background, it is apparent that when the Labor Arbiter rendered his decision and even up to the time when private respondent company filed an appeal therefrom, Republic Act No. 6715 was not yet in effect. Thus, the most logical and necessary consequence was that the execution of the Labor Arbiter's decision as well as the requirements for the perfection of the appeal would have to be governed by the rules prevailing prior to the amendment of the Labor Code by R.A. No. 6715.

Prior to the amendment of Article 223 of the Labor Code by R.A. 6715, "decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission within ten (10) days from receipt of such awards, orders, or decisions" (italics supplied).

There was then no provision providing for an execution pending appeal. Hence, under the facts of the present petition, petitioner had no right to ask for the immediate enforcement of the reinstatement aspect of the Labor Arbiter's decision, no such right having been granted to him under the old rules. Instead, the decision of the Labor Arbiter was stayed by the timely filing of the appeal by private respondent company.

In the motion for writ of execution filed by petitioner, he contended that the appeal of private respondent company was not perfected since there was no bond filed along with the appeal (Rollo, p. 22).

Petitioner erroneously based his argument on the premise that the amended provisions of Article 223 of the Labor Code are applicable to his case. But as previously emphasized, R.A. No. 6715 was not yet in force at the time the appeal was filed. Neither can R.A. No. 6715 be deemed to have retroactive effect, prospective application of the law being the rule rather than the exception (Article 4, New Civil Code). More so in the present case where the law (R.A. No. 6715) itself did not provide for retroactive application (Inciong vs. National Labor Relations Commission 185 SCRA 651 [1990]).

Thus, applying the old rules, where perfection of the appeal involved only "the payment of the appeal fee and the filing of the position paper containing among others, the assignment of error/s, the argument/s in support thereof, and the reliefs sought within the prescribed period" (Omnibus Rules Implementing the Labor Code Book V, Rule I Section 1[s]), there is no doubt that private respondent company's appeal was duly perfected.

It cannot be denied, however, that upon the effectivity of R.A. No. 6715, public respondent NLRC ordered private respondent company to post the additional requirement of cash bond and immediate reinstatement of the petitioner. By this time, the appeal of private respondent company has already been perfected in accordance with the old rules. Consequently, the latter's failure to timely comply with the bond requirement cannot be deemed in any way to affect the perfection of the appeal. Besides, considering the factual peculiarities of the present petition as above-described, compliance with the bond requirement, although a jurisdictional requirement, should be

liberally construed to give way to substantial justice. The same sentiment was expressed by this Court in the 1990 case of YBL (Your Bus Line) vs. NLRC (190 SCRA 160), where the factual background of the case likewise played a vital role in upholding a liberal interpretation of the rules. In the aforementioned case, We held:

> "The Court finds that while Article 223 of the Labor Code, as amended by Republic Act No. 6715, requiring a cash or surety bond in the amount equivalent to the monetary award in the judgment appealed from for the appeal to be perfected, may be considered a jurisdictional requirement, nevertheless, adhering to the principle that substantial justice is better served by allowing the appeal on the merits threshed out by the NLRC, the Court finds and so holds that the foregoing requirement of law should be given a liberal interpretation."

In rebuffing the contentions of petitioner involving the issue of immediate execution, public respondent NLRC correctly ruled that it had no jurisdiction to act upon the motion for writ of execution. 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, as explicitly provided in the New Rules of Procedure of the National Labor Relations Commission Rule V Section 16(3), to wit:

> "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 or 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." (Italics supplied)

Coming now to the main issue of the present petition, i.e., whether the resignation by petitioner was valid and effective, this Court believes and so holds that the resignation tendered by petitioner was voluntary, and therefore valid, in the absence of any evidence of coercion and intimidation on the part of private respondent company.

Petitioner claims that private respondent company thru private respondent Julius Limpe showed him an alleged "spot audit" report wherein petitioner appeared to be short of P49,005.59. He was then handed a ready made resignation letter and ordered to sign the same otherwise an estafa case will be filed against him (Rollo, p. 8). The only evidence presented by petitioner to support his contention of coercion was a letter written by himself and addressed to private respondent Limpe, to wit:

> "Nov. 17, 1987
>
> Mr. J.T. Limpe
> Distileria Limtuaco & Co. Inc
> 1830 Edsa Balintawak
> Quezon City.
>
> "Sir:
>
> "The basic inspiration why you dismissed or forced me to resign was that I was identified with Mr. R.S. Chua the Sales Manager for Visayas & Mindanao. Your so called 'post audit' was but a convenient afterthought and was designed to give semblance of legality to your otherwise illegal acts. As a matter of fact and contrary to the finding of such 'post audit', I had an average or amount refundable to me to be exact P76,465.81. From March 1986 up to Sept. 30, 1986 I do not have any accountability with Limtuaco what so ever as I was sub-agent of E.V. Rodriguez. The refusal of Mrs. Lourdes Galang to show me the records/audit of Mr. E.V. Rodriguez and of L. Pong, Jr. raise doubts as to what your intentions are.
>
> "I therefore demand of you to refund me such amount and reinstate me from my position as "National Promoter" otherwise I will be constrained to file against you a labor case."
>
> "Very truly yours,
>
> "V.P. CALLANTA (SGD.)" (Rollo, p. 18).

We agree with public respondent NLRC that petitioner "failed to adduce evidence that may prove that said resignation was obtained by means of coercion and intimidation" (Rollo, p. 33). The aforequoted letter depicting the coercion allegedly imposed upon him as well as the reason therefore, was nothing but a self-serving assertion which has so little or no value at all as evidence for the petitioner.

Moreover, it is a well-settled principle that for intimidation to vitiate consent, petitioner must have been compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants (Article 1335, par. 2 New Civil Code). In the present case, what allegedly constituted the "intimidation" was the threat by private respondent company to file a case for estafa against petitioner unless the latter resigns.

In asserting that the above-described circumstance constituted intimidation, petitioner missed altogether the essential ingredient that would qualify the act complained of as intimidation, i.e. that the threat must be of an unjust act. In the present case, the threat to prosecute for estafa not being an unjust act (P.P. Agustinos vs. Del Rey, 56 Phil. 512 [1932]), but rather a valid and legal act to enforce a claim, cannot at all be considered as intimidation. A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent (Article 1335, par. 4 New Civil Code).

Furthermore, and on top of the absence of evidence adduced by petitioner to the contrary, the Court also finds it unbelievable that petitioner was rattled and confused into signing a resignation letter on account of a mere "spot audit" report. It is highly unlikely and incredible for a man of petitioner's position and educational attainment to so easily succumb to private respondent company's alleged pressures without even defending himself nor demanding a final audit report before signing any resignation letter. Assuming that pressure was indeed exerted against him, there was no urgency for petitioner to sign the resignation letter. He knew the nature of the letter that he was signing, for as argued by respondent company, petitioner being "a man of high educational attainment and qualification, . . . he is expected to know the import of everything that he executes, whether written or oral" (Rollo, p. 124). In view of the

foregoing factual setting, petitioner cannot now be allowed to withdraw the resignation which, in the absence of any evidence to the contrary, the Court believes was tendered voluntarily by him.

Anent the claims for refund, petitioner once again failed to convincingly prove the authenticity of his claim against private respondent company. Petitioner claims that the amounts of P76,893.42 and P10,000.00 allegedly owed to him by private respondent company were matters proved during the hearings before the Labor Arbiter (Rollo, p. 10). However, the records show that no hearing for the reception of evidence was ever conducted by the Labor Arbiter. At most, what transpired were preliminary hearings which had to be reset for five (5) times due to the absence of counsel for private respondent (Rollo, p. 4). In fact, because of the absence of counsel for respondent company, the Labor Arbiter just ordered the parties to submit their respective position papers in lieu of actual hearings. This having been the case, the Court is not convinced that the money claims of petitioner have really been proven during the alleged hearings before the Labor Arbiter, if any, especially in the present case where the money claims are even refuted by private respondent.

In support of its claims for refund, petitioner presented a written summation of accounts reflecting the amounts allegedly owed by private respondent company to him. However, the aforestated summation is undated and unsigned, thus inadmissible and uncertain as to its origin and authenticity. Further kindling the flame of suspicion as to the origin of the summation in question is the context of the November 17, 1987 letter of petitioner to private respondent Limpe. Quite unusual is the fact that in refuting the findings of the alleged "post audit" conducted by private respondent company, petitioner did not even bother to mention the source of his conclusion that private respondent company still owes him P76,893.42, while at the same time complaining that somehow he is being refused access to and disclosure of some of the company records, particularly the records/audit of E.V. Rodriguez and J. Pong, Jr. These facts are inconsistent with petitioner's contention that it was the auditor of private respondent company itself who made the written summation.

Finally, the claim of petitioner for unpaid allowances amounting to P10,000.00 was satisfactorily refuted by evidence presented by private respondent company in the form of vouchers proving payment of the same (Rollo, p. 98). Thus, petitioner has no more right to demand payment of the same.

WHEREFORE, the Petition is **DISMISSED** for lack of merit. Costs against petitioner.

SO ORDERED.

Feliciano, Romero, Melo and Vitug, *JJ.*, concur.