SUPREME COURT
FIRST DIVISION

SCHERING EMPLOYEES' LABOR UNION,
***Petitioner*,**

-versus-

G.R. No. 118586
September 28, 1998

NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), SCHERING-PLOUGH CORPORATION,
***Respondents*.**
x----------x

D E C I S I O N

QUISUMBING, *J.*:

This Special Civil Action for Certiorari under Rule 65 of the Rules of Court seeks to annul the Resolution[1] promulgated on February 21, 1994 by public respondent National Labor Relations Commission (NLRC) in NLRC NCR CA No. 004243-93; NLRC NCR Case No. 00-05-02773-92 and its Order[2] dated October 12, 1994 which denied petitioner's motion for reconsideration.

Petitioner Schering Employees Labor Union (SELU) is a duly organized labor union representing the employees of herein private respondent Schering-Plough Corporation (SPC). Private respondent

Epitacio Titong is the president of said corporation and was impleaded in this suit in that capacity.

The factual and procedural antecedents of this case are as follows:

Effective March 20, 1989, company employees were entitled to retirement benefits equivalent to 1.5 (as the "salary credit formula") of a month's compensation for every year of credited service (the "tenure") upon completion of at least 5 years of service.[3] The percentages of benefits are graduated in a schedule (called "vesting schedule") contained in the Retirement Plan,[4] depending on the tenure of an employee. To illustrate, retirement benefits would be computed based on the following factors:

Completed Years of Credited Service (tenure)	Percentage of Retirement Benefit (vesting schedule)	Accrued Salary Credit Formula[5]
below 5 years	Nil	nil
5 years	30%	1.5
6	35%	1.5
x x x	x x x	x x x
9 and above	100%	1.5

The computation is: Monthly Compensation x Tenure x Vesting Schedule x Salary Credit Formula.

On June 13, 1990, private respondent (SPC) and the petitioner (SELU) included as one of the stipulations in their collective bargaining agreement (CBA) that the "Company and the Union shall jointly undertake the improvement of the present Retirement Plan within nine (9) months from the effectivity of this Agreement."[6]

On May 25, 1992, petitioner filed a complaint before the National Capital Region Arbitration Branch of public respondent NLRC for alleged violation of the abovementioned provision in the CBA. Petitioner prayed that, after due notice and hearing, private respondents be declared "guilty of reneging its contractual obligation and to order the same for the full improvement and implementation of the retirement plan in compliance with the essence and substance

of the agreement."[7] The case was assigned to Labor Arbiter Jesus N. Rodriguez, Jr.

On July 13, 1992, petitioner filed a Motion to Withdraw the complaint on the following grounds:[8]

> "1. That during the conference held on 29 June 1992, both representatives of complainant SELU and the respondents agreed to settle the issue in the above-entitled case;
>
> "2. That both parties agreed that the retirement plan be implemented effective 16 July 1992 providing for an improvement of the plan to 155% per year of service up to 15 years, and 160% per year of service for more than fifteen years without vesting schedules; and
>
> "3. That in accordance with the said agreement the issues submitted for resolution to this Honorable Office has now become moot and academic."

The Labor Arbiter issued an Order dated July 14, 1992 granting the motion and dismissed the case as follows:

> "Acting upon the motion to dismiss filed by the Union President Mr. Gilbert Gorospe, and assisted by Mr. Emmanuel S. Durante, authorized representative of the union, on the ground:
>
> > "1. That the parties agreed that the retirement plan be implemented effective July 16, 1992, providing for an improvement of the plan to 155% per year of service up to fifteen years, and 160% per year of service for more than fifteen years without vesting schedules.
>
> "WHEREFORE, said motion being well-taken, the same is GRANTED, and as prayed for, this case is ordered DISMISSED.
>
> "SO ORDERED."[9]

On August 27, 1992, private respondents filed a Motion to Amend the Order of July 14, 1992 seeking to remove the phrase "without vesting

schedules" which the order had quoted from the Union's Motion to Withdraw, asserting that the Company never agreed to the removal of the vesting schedules in the Retirement Plan, and that the amendment on the Retirement Plan pertains only to the salary credit formula.

On November 10, 1992, the Labor Arbiter granted private respondents' motion, and the phrase "without vesting schedules" was deleted. Petitioner appealed this order to herein public respondent NLRC, which, in a Resolution dated February 21, 1994, dismissed the said appeal and affirmed the order of the Labor Arbiter. It held that the first "Order could not have resolved or concluded any question on vesting schedules since the same has not yet been submitted much more litigated before the Labor Arbiter before the withdrawal of the complaint." Thus, it found that "the Labor Arbiter did not err nor abuse his discretion in issuing its amendatory Order of November 10, 1992 and deleting the phrase 'without vesting schedules'."[10]

Petitioner's motion for reconsideration of the said resolution was denied by public respondent NLRC in a Resolution dated October 12, 1994.

Hence, the instant petition for certiorari.

Petitioner raises the following grounds for its petition:

I. RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN SUSTAINING THE LABOR ARBITER'S ORDER AMENDING A FINAL AND EXECUTORY ORDER.

II. PETITIONER WAS DEPRIVED OF PROCEDURAL DUE PROCESS WHEN RESPONDENT NLRC ACCEPTED THE UNILATERAL REPRESENTATION OF THE PRIVATE RESPONDENTS THAT THE VESTING SCHEDULE IN THE RETIREMENT PLAN IS MAINTAINED.[11]

Anent the first ground, petitioner alleges that the Order dated July 14, 1992, being final and executory, cannot be further amended or corrected except for clerical errors or mistakes. It submits that the

public respondent committed grave abuse of discretion in sustaining the view that a judgment is final and executory only if there is an adjudication or trial on the merits with respect to the issues presented.

As to the second ground, petitioner alleges that if the matter regarding the "vesting schedule" was still contentious, it was highly irregular for the public respondent to have rejected petitioner's position and to have accepted private respondents' submission without trial.

Private respondents, by way of Comment,[12] argue that the question on "vesting schedules" in the Retirement Plan had already become moot and academic when the "vesting schedules" were carried over in the new CBA[13] entered into by petitioner union and respondent corporation on August 16, 1993.

Private respondents likewise assert that there was no abuse of discretion because the Order of July 14, 1992 of the Labor Arbiter was not an adjudication on the merits of the case which would foreclose amendments after its finality. They add that the order dated November 10, 1992, had merely corrected that of July 14, 1992 which had quoted from the allegations of the motion to withdraw complaint filed by petitioner the phrase "without vesting schedules."

Anent the second ground, they allege that there was no deprivation of procedural due process since there was no agreement between SPC and SELU to abrogate the vesting schedules. There was also no proof submitted to show such abrogation, according to the private respondents.

In its own Comment,[14] the NLRC alleges that the arguments advanced by the petitioner have already been resolved at the arbitral and appellate levels. For emphasis, it quoted pertinent portions of its decision, to wit:

> "It is clear that the prior order of July 14, 1992 was issued by the Labor Arbiter in acting upon the motion to withdraw of the appellant union and not in the passing upon or approving any compromise agreement as claimed by the union, which only

came about on July 31, 1992 or more than two weeks after the Motion to Withdraw was filed on July 13, 1992. The quotation in the said Order of July 14, 1992 of the allegation in paragraph I of the Motion to Withdraw specifically the phrase 'without vesting schedules' did not bar or foreclose the authority of the Labor Arbiter to amend the same. This order could not have resolved nor concluded any question on vesting schedule since the same has not yet been submitted, much more litigated before the Labor Arbiter before the withdrawal of the complaint. Thus, the Labor Arbiter correctly held in its Order of July 14, 1992 when he resolved:

> 'The Order of July 14, 1992 was issued in reaction to complainant's motion to withdraw its complaint and while it quoted the disputed paragraph 2 thereof, it did not necessarily adjudicate on its validity or enforceability nor upheld the concurrence thereon of both parties. As divergent views of this particular clause have now come to fore from the parties themselves, the Order of July 14, 1992 has to be amended to avoid any conclusion that the contested clause "without vesting schedules" had already been resolved and thereby invoked as a precedent on an action invoking (sic) the same questions.
>
> 'The motion of the complainant for the dismissal of respondents' Motion to Amend Order on the ground that the Order has already become final and executory is without merit, the Order not being an adjudication on the merits of the complaint; hence, may be recalled on (sic) commended (sic) to conform to obtaining facts.'"

The Solicitor General, by way of Comment,[15] is of the opinion that respondent NLRC committed grave abuse of discretion in affirming the amendatory order issued by the Labor Arbiter, said order and its affirmance being contrary to law and jurisprudence. He argues that the July 14, 1992 Order of the Labor Arbiter, being final and executory, can no longer be amended, and any amendment or alteration made which substantially affects the final and executory judgment is null and void for lack of jurisdiction.[16]

After a careful consideration of the petition and the comments thereon, we find that the main issue in this petition is whether or not public respondent NLRC committed grave abuse of discretion when it dismissed petitioner's appeal and affirmed the Labor Arbiter's amendatory Order dated November 10, 1992.

This issue can be resolved by examining the nature of the Labor Arbiter's Order dated July 14, 1992. Public respondent insists that this order granting the motion to withdraw the complaint as well as dismissing it was not final since the order did not touch on the merits of the case.

But it must be noted that finality of a judgment or order does not require an adjudication on the merits. This Court has held that a final judgment or order is one that finally disposes of a case, leaving nothing to be done by the court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action.[17] Simply said, a final judgment or order either operates to vest some right or terminates the action itself.

The Order of July 14, 1998, contrary to respondents' contention, is in our view a final order. For it is an order of dismissal which terminated the litigation. Moreover, the same order is not only final but also executory. Art. 223 of the Labor Code, as amended reads:

> "Art. 223. Appeal. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards or orders."

Private respondents admit that they received a copy of said order on August 14, 1992.[18] They, however, filed their motion to amend the order only on August 27, 1992, or thirteen (13) days after their receipt of the order. Their motion therefore was filed late as the order became final and executory three days earlier.

Thus, the Solicitor General correctly points out that the power of the Labor Arbiter to amend the order does not depend on whether the portion thereof to be amended delves with a matter which has been litigated upon or not. Instead, it depends on whether or not the order dismissing the complaint has become final and executory.[19]

It is settled that once a decision or order becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend.[20] Under the circumstances obtaining in this case, the public respondent appears to have committed a grave abuse of discretion in allowing the amendment of a final and executory order by the Labor Arbiter considering that the ten-day period for appeal under Art. 223 of the Labor Code is "not only mandatory but also jurisdictional."[21]

Further, to allow the amendment of the order will result in the circumvention of Section 17, Rule V of the New Rules of Procedure of the NLRC, which states that "No motions for reconsideration of any order or decision of a Labor Arbiter shall be allowed." Worse, it will permit private respondents to violate the statutory ten-day period requirement for appeal,[22] which we cannot allow.

Hence, we find merit in the petitioner's submission regarding the finality of the Labor Arbiter's Order dated July 14, 1992.

This Court, however, agrees with private respondents' contention that the question on "vesting schedules" in the Retirement Plan had already become moot and academic when the same "vesting schedules" were carried over and agreed upon in the new CBA entered into by petitioner SELU and SPC on August 16, 1993. Nevertheless, the petition has to be given due course for the Court to settle, as we now do, the principal issue raised by petitioner involving grave abuse of discretion on the part of the NLRC in affirming, and lack of jurisdiction on the part of the Labor Arbiter in issuing, the assailed order of the latter dated November 10, 1992.

WHEREFORE, the instant petition for certiorari is hereby **DISMISSED**, the issue of "vesting schedules" having become **MOOT AND ACADEMIC**.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., Bellosillo, Vitug and Panganiban, *JJ.*, concur.

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[1] Petition, Annex "A", Per Commissioner Domingo H. Zapanta with Presiding Commissioner Edna Bonto-Perez and Commissioner Rogelio I. Rayala, concurring; Rollo, pp. 17-27.
[2] Rollo, p. 28.
[3] Rollo, p. 4.
[4] Comment, Rollo, pp. 37-38, Annex "A", CBA, particularly Sec. 1, Art. XI on Retirement and Termination Benefits.
[5] Increased to 1.60 in CBA of August 16, 1993.
[6] Rollo, p. 4.
[7] Rollo, p. 53; citing Records, pp. 3-4.
[8] Rollo, p. 5, Emphasis supplied.
[9] Id., p. 6, Emphasis supplied.
[10] Supra note 1, at pp. 6-7; Rollo, pp. 23-24.
[11] Id., pp. 7-14.
[12] Id., pp. 37-45.
[13] Supra note 5.
[14] Rollo, pp. 91-98.
[15] pp. 52-60.
[16] Id., at 52, citing Marcopper Mining Corporation vs. Liwanag Paras Briones, et al., 165 SCRA 464.
[17] Investments, Inc. vs. CA, 147 SCRA 334, at 339; People vs. MTC of Quezon City, Branch 32, 265 SCRA 645, at 651; Ceniza vs. CA, 218 SCRA 390, at 398; Mejia vs. Alimorong, 4 Phil. 572.
[18] Rollo, p. 56; citing Records, p. 23.
[19] Comment of Solicitor-General, Rollo, p. 58.
[20] Turgueza vs. Hernando, 97 SCRA 483; First Integrated Bonding and Insurance Co., Inc. vs. Hernando, 199 SCRA 706, at 804; Villanueva vs. CFI of Oriental Mindoro, 119 SCRA 288, at 297; Garcia vs. Feluverri, 132 SCRA 639.
[21] Ramones vs. NLRC, 219 SCRA 62, at 68; Lucero vs. NLRC, 203 SCRA 218, at 224; Narag vs. NLRC, 155 SCRA 199.
[22] Supra note 18, at 59.
