

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

GEORGE M. TABERRAH,
Petitioner,

-versus-

**G.R. No. 117742
July 29, 1997**

**NATIONAL LABOR RELATIONS
COMMISSION, CALTEX (PHIL.), INC.
and WILLIAM TIFFANY,**
Respondents.

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DECISION

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 in 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.^[1] 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.^[2] CALTEX subsequently notified him that a formal investigation would be conducted on 10 February 1993 and advised him to seek the assistance of counsel.^[3]

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.^[4]

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 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.^[5]

The Labor Arbiter denied the motion and decided the case on the basis of the pleadings and other documentary evidence submitted by the parties.^[6] 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 P5 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 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, insofar 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.^[7] 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 —

SEC. 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.

SEC. 5. Period to Decide Cases. — . . . (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 thereof. 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 pleading 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 it set out and argued the factual as well as the legal basis of its position.^[8]

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 was 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 vs. Ladrico III*,^[9] 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 presupposes that the amount of the monetary

award is stated in the judgment or at least attached to the judgment.

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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 have to be made by that office. It is understood of course that appellant has filed the appeal on time as in this case.

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One last word — the plight of labor must always be considered in any case. However, such a case must be handled with an even hand. More so when the amount of the monetary award runs to millions that will substantially paralyze the employer if not drive it to penury. The immediate execution of the judgment should be undertaken only when the monetary award had been carefully and accurately determined by the NLRC and only after the employer is given the opportunity to be heard and to raise objections to the computation.”

As a rule, compliance with the requirements for the perfection of an appeal within the reglementary period^[10] is mandatory and jurisdictional.^[11] However, in *National Federation of Labor Unions vs. Ladrico III* as well as in several other cases,^[12] this Court relaxed the requirement of the posting of an appeal bond within the reglementary period as a condition for perfecting the appeal. This is in line with the principle that substantial justice is better served by allowing the appeal to be resolved on the merits rather than dismissing it based on a technicality.

The instant case likewise calls for a liberal application of the rule in the interest of justice. There is a compelling need to reduce the excessive and unconscionable amount of damages awarded by the Labor Arbiter. But unless it is held that CALTEX was able to perfect its appeal on time, the Labor Arbiter's decision is final and executory and therefore cannot be modified in any respect.^[13]

Coming now to the fourth issue, we nonetheless find the instant petition to be impressed with merit as to warrant a reversal of the NLRC decision. The conclusions of the NLRC based on practically the same facts established before the Labor Arbiter are clearly contrary to the evidence.

The employment of petitioner was terminated for alleged breach of trust and confidence, or more specifically, for (a) violation of the 14 January 1992 Memo for Board Approval which prescribed that a time charter contract with MIS Supply Corporation should only be for a maximum period of five (5) years. Petitioner issued Letters of Intent (LOIs) to MIS Supply Corporation for a contract period of seven (7) years plus three (3) years; (b) non-compliance/inadequate compliance with procedures for the reconciliation reports resulting in accumulated in-transit losses or outstanding stock balances amounting to at least P100 Million for the period January 1990 to December 1991; and, (3) violation of control procedure in the conduct of the bidding for the sale of company assets in Aparri which consisted of non-publication of bid solicitations. Instead, petitioner simply personally invited five (5) companies to submit their bids.

As for the first ground, the NLRC ruled that the LOIs issued by petitioner did not bear the imprimatur of any CALTEX official and that they were solely signed by petitioner without any authority. But the evidence shows that while the LOIs were signed by petitioner alone the same were accompanied by a request for release, which request was approved by the top officials of CALTEX as shown by their signatures in a memorandum dated 10 April 1992.^[14] In addition, a cursory reading of the memorandum readily shows that it specifically mentions the terms of the contract, i.e., seven (7) years plus three (3) years extension at charterer's option, which means that if CALTEX thought that there was violation of company rules

concerning the chartering of vessels then its top officials would not have approved the request for release of the questioned LOIs.

With respect to the second ground for dismissal, it is unfair for CALTEX to blame petitioner for the accumulation of in-transit losses due to the non-reconciliation of stock balances. Records show that no reconciliation was done since November 1989.^[15] The manager then responsible for the reconciliation process was a certain “Mr. A. A. Ng” who was replaced by petitioner only on 2 March 1992^[16] in the midst of management efforts to solve the reconciliation problem. In other words, it was not petitioner who created the problem of non-reconciliation of stock balances. It was already existing and accumulating even before he was assigned to perform the formidable task of reconciliation. That petitioner was unable to complete the reconciliation for the years 1990 and 1991 as scheduled was due to the fact that CALTEX provided him with only two (2) assistants when he needed at least fifteen (15) to reconcile the stock balances.^[17]

As regards the third ground, petitioner adequately explained that he dispensed with the public bidding to avoid projecting an image of massive pullout. Moreover, the bidders were invited individually and separately by virtue of their credentials as businessmen. And whether or not the bidders afterwards conspired to fraudulently manipulate the bid was not the business of petitioner and was in fact beyond his control.^[18] His explanation was even adopted by his immediate superior, E.M. Cruz, in a memorandum dated 8 February 1991.^[19]

The doctrine that the findings of fact of the NLRC are binding on this Court if supported by substantial evidence is well established. However, in the same way that the findings of fact unsupported by substantial and credible evidence do not bind this Court, we neither uphold the erroneous conclusions of the NLRC.^[20]

While this Court has continually recognized the right of the employer to dismiss an employee on the ground of breach of trust and loss of confidence, such right must not be exercised arbitrarily and without just cause. Loss of confidence as a ground for validly dismissing an employee should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal and unjustified. Loss of confidence may not be arbitrarily asserted in the face of

overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify an earlier action taken in bad faith.^[21]

Finally, while it may be true that the award of moral and exemplary damages is discretionary upon the Labor Arbiter, the amount thereof must be reasonable and justified. In the present case, we find the award of damages excessive and unconscionable. Consequently, we reduce the award of P5 million for moral damages to P1 million and the P2 million for exemplary damages to P0.2 million. The attorney's fees of ten percent (10%) is maintained but based on the amounts of damages as herein modified.

WHEREFORE, the Decision of the National Labor Relations Commission is **REVERSED** and **SET ASIDE** and the Decision of the Labor Arbiter is **REINSTATED**, subject to the modification that the damages awarded therein are reduced to P1 Million for moral damages and P0.2 million for exemplary damages. The ten percent (10%) awarded for attorney's fees shall accordingly be based on the amounts as herein modified. No costs.

SO ORDERED.

Padilla, Vitug and Kapunan, JJ., concur.
Hermosisima, Jr., J., is on leave.

[1] Rollo, pp. 67-71.

[2] Records, pp. 156-157; Annex "G."

[3] Id., p. 168; Annex "N."

[4] Rollo, p. 128; Annex "Q."

[5] Records, p. 297.

[6] The Labor Arbiter rendered his Decision on 7 February 1994 which CALTEX received on 16 February 1994.

[7] Callanta vs. National Labor Relations Commission, G.R. No. 105083, 20 August 1993, 225 SCRA 526, 533.

[8] See Llorca Motors, Inc. vs. Franklin Drilon, G.R. No. 82895, 7 November 1989, 179 SCRA 175.

[9] G.R. Nos. 94540-41, 8 May 1991, 196 SCRA 833, 840-841, 845.

[10] Under the law, decisions, awards, or orders of the Labor Arbiter are appealable to the NLRC within ten (10) days from receipt thereof. If the arbiter's decision involves monetary award, the appeal by the employer may

be perfected only upon the posting of a bond equivalent to the monetary award. See Art. 223, first and second pars., Labor Code.

- [11] See *Italian Village Restaurant vs. National Labor Relations Commission*, G.R. No. 95594, 11 March 1992, 207 SCRA 204, 208.
- [12] See *Star Angel Handicraft vs. National Relations Commission*, G.R. No. 108914, 20 September 1994, 236 SCRA 581; *Blancaflor vs. National Labor Relations Commission*, G.R. No. 101013, 2 February 1993, 218 SCRA 366; *Rada vs. National Labor Relations Commission*, G.R. No. 96078, 9 January 1992, 295 SCRA 69; *YBL (Your Bus Line) vs. National Labor Relations Commission*, G.R. No. 93381, 28 September 1990, 190 SCRA 160.
- [13] *Nunal vs. Court of Appeals*, G.R. No. 94005, 6 April 1993, 221 SCRA 26, 32.
- [14] Records, p. 209; Annex "V."
- [15] *Id.*, p. 80; Annex "2."
- [16] Rollo, p. 166; Annex "X."
- [17] Even Caltex Management stressed the need for more manpower to do the reconciliation. See Rollo, pp. 170-171; Annex "Z."
- [18] Rollo, pp. 176-177; Annex "BB."
- [19] *Id.*, pp. 178-180; Annex "CC."
- [20] *San Miguel Corporation vs. National Labor Relations Commission*, G.R. No. 50321, 31 March 1984, 128 SCRA 180, 186-187.
- [21] *Starlite Plastic Industrial Corp. vs. National Labor Relations Commission*, G.R. No. 78491, 16 March 1989, 171 SCRA 315, citing *Central Bank and Trust Co. vs. Court of Appeals*, No. L-42724, 9 April 1985, 135 SCRA 569.