SUPREME COURT
THIRD DIVISION

LEIDEN FERNANDEZ, BRENDA GADIANO, GLORIA ADRIANO, EMELIA NEGAPATAN, JESUS TOMONGHA, ELEONOR QUIÑANOLA, ASTERIA CAMPO, FLORIDA VILLACERAN FLORIDA TALLEDO, MARILYN LIM and JOSEPH CANONIGO,
***Petitioners*,**

-versus-

G.R. No. 105892
January 28, 1998

NATIONAL LABOR RELATIONS COMMISSION, FOURTH DIVISION; MARGUERITE 1 LHUILLIER AND/OR AGENCIA CEBUANA-H. LHUILLIER,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

Is failure to attend hearings before the labor arbiter a waiver of the right to present evidence? Are moral damages included in the computation of "monetary award" for purposes of determining the amount of the appeal bond? Is there a limit to the amount of service incentive leave pay and backwages that may be awarded to an illegally dismissed employee?

The Case

These are the main questions raised in this petition for certiorari under Rule 65 of the Rules of Court assailing the March 11, 1992 Decision[2] of Respondent National Labor Relations Commission (NLRC),[3] the dispositive portion of which reads:[4]

> "WHEREFORE, premises considered, the appealed decision is hereby declared VACATED and the entire records of these cases are hereby ordered remanded to the Regional Arbitration Branch VII for further proceedings."

This petition also challenges the NLRC's May 29, 1992 Resolution denying the motion for reconsideration.

The Decision[5] vacated by the NLRC and penned by Labor Arbiter Gabino A. Velasquez, Jr. disposed as follows:[6]

> "WHEREFORE, judgment is hereby rendered in favor of the complainants and against the respondent. The respondent is hereby ordered:
>
> 1. To reinstate the complainants to their respective position [sic] at the Agencia Cebuana with full backwages without qualification; if reinstatement is not feasible, for one reason or another, to pay to the complainants their respective separation pay, service incentive leave pay with full backwages without qualification computed hereunder as follows:

1. LEIDEN FERNANDEZ:

a)	Separation Pay for 6 years	P8,640.00
b)	Service Incentive Leave (6 yrs.)	3,322.50
c)	Backwages for one year only	34,560.00
	TOTAL	P46,522.50

2. GLORIA ADRIANO:

a)	Separation pay for 17 years	P28,560.00
b)	Service incentive leave (17 yrs.)	10,986.25
c)	Backwages for one year	40,320.00
	TOTAL	P79,866.25

3. EMELIA NEGAPATAN:

a)	Separation pay for 24 yrs.	P35,760.00
b)	Service incentive leave (24 yrs.)	13,752.00
c)	Backwages for one year	35,760.00
	TOTAL	P85,272.00

4. JESUS P. TOMONGHA:

a)	Separation pay for 33 years	P50,655.00
b)	Service Incentive leave	19,478.25
c)	Backwages for one year	36,840.00
	TOTAL	P106,973.25

5. ELEONOR QUIÑANOLA:

a)	Separation pay for 14 years	P20,860.00
b)	Service Incentive Leave	8,022.00
c)	Backwages for one year	35,760.00
	TOTAL	P64,642.00

6. ASTERIA CAMPO:

a)	Separation pay for 13 years	P19,240.00
b)	Service Incentive Leave (13 yrs.)	7,400.00
c)	Backwages for one year	35,520.00
	TOTAL	P62,160.25

7. FLORIDA VILLACERAN:

a)	Separation pay for 17 yrs.	P25,160.00
b)	Service Incentive leave (17 yrs.)	9,677.25
c)	Backwages for one year	35,520.00
	TOTAL	P70,357.25

8. FLORIDA TALLEDO:

a)	Separation pay for 18 yrs.	P27,450.00
b)	Service Incentive leave (18 yrs.)	10,557.00
c)	Backwages for one year	36,600.00
	TOTAL	P74,607.00

9. BRENDA GADIANO:

a)	Separation pay for 13 yrs.	P19,597.50
b)	Service Incentive leave (13 yrs.)	7,536.75
c)	Backwages for one year	36,180.00
	TOTAL	P63,313.25

10. MARILYN LIM:

a)	Separation pay for 7 yrs.	P12,950.00
b)	Service Incentive for 7 yrs.	4,980.50
c)	Backwages for one year	44,400.00
	TOTAL	P62,330.00

11. JOSEPH CANONIGO:

a)	Separation Pay for 2 years	P2,700.00
b)	Service Incentive Leave (2 yrs.)	1,038.50
c)	Backwages for 1 year	32,400.00
	TOTAL	P36,138.50

2) To pay to all complainants the amount of P100,000.00 for moral damages and the amount of another P100,000.00 for exemplary damages, plus the amount of P98,018.25 as attorney's fees representing 10% of the total award and the amount of P30,000.00 for litigation expenses.

The totality of the award amounting to P1,078,200.55 must be deposited with this Office ten (10) days from receipt of this decision for further disposition. However, the payment of backwages will be computed as of the actual date of payment provided it will not exceed a period of three years."

The factual milieu of this case is recited by the solicitor general in his Comment dated December 21, 1992 as follows:[7]

> "1. The instant case stemmed from a consolidated complaint against private respondents Agencia Cebuana-H. Lhuillier and/or Margueritte Lhuillier (Lhuillier) for illegal dismissal (Rec., pp. 56-58). The Agencia Cebuana is a sole proprietorship operated by Margueritte Lhuillier.
>
> 2. Two (2) Position Papers were filed by petitioners, one by Leiden E. Fernandez, Gloria B. Adriano, Emilia A. Negapatan, Jesus P. Tomongha, Eleonor A. Quinanola, Asteria C. Ocampo [sic], Florida Villaceran, Florida B. Tallado [sic] and Brenda A. Gadiano (Rec., pp. 79-88) and the other by Marilyn E. Lim and Joseph Canonigo (Exhibit 'C-4').
>
> 3. In their Position Papers, petitioners alleged that they were employed by Lhuillier, as follows:

	Name	Position	Date of Employment	Latest Salary/Month	Date of Dismissal
1.	Leiden E. Fernandez	Cashier	Dec. 3, 1984	P2,880.00	July 19, 1990
2.	Gloria B. Adriano	Appraiser	July 10, 1973	3,360.00	July 19, 1990
3.	Emilia A. Negapatan	Sales Girl	March 9, 1966	2,980.00	July 19, 1990
4.	Jesus P. Tomongha	Office Clerk	July 1957	3,070.00	July 19, 1990
5.	Eleonor A. Quiñanola	Office Clerk	Dec. 8, 1976	2,980.00	July 21, 1990
6.	Asteria C. Campo	Clerk	May 27, 1977	2,960.00	July 19, 1990
7.	Florida Villaceran	Sales Clerk	March 8, 1973	2,960.00	July 19, 1990
8.	Florida B. Talledo	Pawnshop Writer	June 19, 1972	3,050,00	July 19, 1990
9.	Brenda A. Gadiano	Pawnshop Teller	March 7, 1977	3,015,00	July 19, 1990
10.	Marilyn E. Lim	Branch Manager	June 1984	3,700.00	Feb. 16, 1990
11.	Joseph M. Canonigo	Record Keeper	June 1988	2,700.00	July 14, 1990

Petitioners Fernandez, Adriano, Negapatan, Tomongha, Quiñanola, Campo, Villaceran, Talledo, and Gadiano further alleged that prior to and during early July 1990, they 'demanded' from Margueritte Lhuillier an increase in their salaries since her business was making good and that she was evading payment of taxes by making false entries in her records of account; that Lhuillier became angry and threatened them that something would happen to their employment if they

would report her to the BIR; that shortly thereafter, Lhuillier suspected them of stealing jewelry from the pawnshop; that on July 19, 1990, Lhuillier verbally informed them not to report for work as their employment had been terminated; that from July 20, 1990 they did not report for work; and on July 23, 1990, they filed the instant complaint (Rec., pp. 79-88).

On their part, petitioners Lim and Cañonigo alleged that in early January 1990 and in June 1990, respectively, they demanded increases in their salaries since they noted that Lhuillier had a very lucrative business besides evading tax payments by making false entries in her records of account; that they also informed her that they intended to join the Associated Labor Union (ALU), which made Lhuillier angry, causing her to threaten them that should they report her to the BIR and join the ALU something would happen to their employment; that Lhuillier advised them to tender their resignations as they were reportedly responsible for some anomalies at the Agencia Cebuana-H Lhuillier; that Lhuillier assured them that they will be given separation pay; that they asked Lhuillier that they be allowed to confront the persons who reported to her about their supposed involvement in the alleged anomalies but she ignored it and told them to tender their respective resignations effective February 16, 1990 (for Lim) and July 14, 1990 (for Canonigo); and that they were not given separation pay (Decision, pp. 6-8; Rec., pp. 256-258).

5. In her Position Paper, Lhuillier, represented initially by Atty. Malcolm V. Seno, alleged that:

    a) In the case of Marilyn Lim, on January 13, 1990, she was informed that an investigation will be conducted by Lhuillier because of the report received by Flora Go, also an employee of Lhuillier, that Lim sold to a company consumer her own jewelry, in violation of the company house rules; on January 22, 1990, a Notice of Intended Termination was served upon her requiring her to submit a written explanation within 48 hours from receipt; Lim did not submit a written explanation but actively participated in the

investigation where she admitted having committed the violation complained of; in view of her admission of guilt, the company lawyer recommended to the management her demotion and transfer without reduction of salary; after Lim's receipt of a copy of the investigation report, she sent through her lawyer a letter signifying her intention to resign and her willingness to execute a promissory note for her indebtedness; the company gave Lim a draft of the promissory note which was never returned by her; on February 24, 1990 she tendered an irrevocable letter of resignation, hence, she was not terminated; and because of the malicious and false complaint filed by Lim, the company was compelled to file a counter-complaint for Perjury against her before the Office of the City Prosecutor of Cebu City (Rec., pp. 92-93; 97).

b) In the case of Jesus Tomongha, he was found to have stolen 'rematado' jewelries worth P70,670.00 sometime in March 1990; instead of attending the investigation scheduled for this offense, he abandoned his job although his application for leave of absence was not approved; Lhuillier asked the company lawyer to talk with Tomongha for him to return to work so that he could pay his pecuniary liability out of his salary; Lhuillier made it a pre-condition for his return to work that he executes a promissory note for his indebtedness; on April 10, 1990, he executed a promissory note and was allowed to return to work; on July 20, 1990, he and the other petitioners, abandoned their employment; he was not dismissed but he was allowed to return to work and was only made to execute a promissory note when the company found out sometime in March 1990 that he had stolen "rematado" jewelries worth P70,670.00 (Rec., pp. 97-101).

c) In the Case of the other petitioners, on July 19, 1990, Gloria Adriano was found by Flora Go to have overdeclared the weights and values of certain items

> of jewelry pawned to the company, as a result of which, upon investigation, the pawnshop was found to have lost the amount of P174,850.00; a letter dated July 19, 1990 was served upon Adriano to explain within 72 hours why she should not be terminated; on July 20, 1990, Gloria Adriano, Florida Villaceran, Emilia Negapatan, Brenda Gadiano, Leiden Fernandez, Jesus Tomongha, Asteria Campo and Florida Talledo did not report for work although no requests for leave of absence were filed by them, which absence violated company rules; on July 21, 1990, the said employees did not report for work;

another employee, Eleonor Quiñanola, also did not report for work although she died not file a request for leave of absence; on July 23, 1990 the said nine (9) employees did not report for work; because of this unusual incident, the management decided to make an inventory of the transactions in Agencia Cebuana and the 'rematado' diamond-studded jewelry; the inventory showed that the pawnshop incurred a considerable loss as a result of the anomalous overpricing of pawned items and the employees immediately responsible were Gloria Adriano, Florida Talledo and Leiden Fernandez, being the appraiser, writer and payer, respectively; the inventory also showed that of the 'rematado' diamond-studded jewelries, items worth P1,592,200.00 were lost for which Florida Villaceran and Emilia Negapatan were directly responsible, being the employees entrusted with their safekeeping; a case of Estafa was filed on July 24, 1990 before the Office of the City Prosecutor of Cebu City against Gloria Adriano, Florida Talledo, Leiden Fernandez, Asteria Campo, Brenda Gadiano, Florida Villaceran, Emilia Negapatan, and Jesus Tomongha and three (3) other unknown persons; a case of Theft was filed on August 16, 1990 with the Office of the City Prosecutor of Cebu City against Florida Villaceran and Emilia Negapatan; when Lhuillier left for Hongkong on July 19, 1990, she did not terminate the employment of Gloria Adriano nor was she advised not to report for work, although a letter was served upon her requiring her to explain within 72 hours why she should not be terminated from her employment; when Lhuillier

arrived from Hongkong, she caused to be served upon the eight (8) petitioners who joined Adriano, letters dated July 25, 1990 requiring them to explain the sudden abandonment of their posts; petitioners, except Lim, instead of giving an explanation, claimed that their employment(s) were terminated on July 19, 1990; Lhuillier was prevented from pursuing any action in respect of the illegal abandonment of their work by the nine (9) petitioners because she was served with summons in the instant case; petitioners did not report for work and voluntarily abandoned their work on July 19, 1990 in order to dramatize their sympathy for Gloria Adriano, and they were not dismissed from their employment; their demand for an award of damages and attorney's fees was unwarranted; petitioners had no cause of action against Lhuillier because they were not terminated from employment; and Quiñanola could not have been terminated from employment on July 21, 1990 because Lhuillier was in Hongkong at that time (Rec., pp. 96-108).

6. Trial on the merits ensued and hearings were scheduled on July 5, 8, and 12, 1991.

7. The hearing scheduled on July 5, 1991 was, however, postponed by agreement of the parties as shown in the minutes of the proceedings on July 8, 1991:

> 'x x x
>
> REMARKS
>
> This case was scheduled for the cross-examination of the last witnesses (sic), Marilyn Lim, who is one of the complainants of this (sic) consolidated cases.
>
> The scheduled dates was (sic) July 5, 8, and 12, 1991 which dates were for the crossexamination (sic) of Marilyn Lim and for the respondents to present their evidence.
>
> The July 5, 1991 (sic) was postponed upon agreement [sic] of the parties and counsels and that it was agreed (sic) the

respondents (sic) counsel will cross examine Marilyn Lim on July 8, 1991 and for the respondents to present their evidence on July 12, 1991. In as much (sic) as the respondents and their counsel failed to appear today to cross-examine Marilyn Lim, we moved that the respondent be declared having waived their rights (sic) to cross-examine Marilyn Lim.' (Rec., p. 176).

8. On July 8, 1991, counsel for petitioners filed Complainants' Formal Offer of Evidence (Rec., pp. 182-187).

9. At the hearing scheduled on July 12, 1991, Atty. Seno and Lhuillier failed to appear. Thus, counsel for petitioners submitted the instant case for resolution (Re C., p. 181).

10. On July 18, 1991, a 'Ruling' was issued by Labor Arbiter Velasquez, admitting complainants' exhibits (Rec., pp. 189-190).

11. On July 30, 1991, counsel for petitioners filed an Urgent Motion For Early Decision (Rec., pp. 191-193).

12. On August 6, 1991, Atty. Seno filed a Comment to the Offer of Exhibits With Counter-Manifestation stating that:

> 'The failure of undersigned to appear on the date of hearing was for the reason that his car bogged down, as in fact he called up the Office of the Hearing Officer. While his absence may be considered a waiver to cross-examine the witness, it cannot be taken to mean forfeiture of the right to present admissible evidence against the complainant witness.' (Rec., pp. 195-197)

13. On August 9, 1991, Atty. Seno filed his Comment on Complainants' Urgent Motion For Early Decision praying that Lhuillier be given a period of ten (10) days from August 9, 1991 within which to submit additional affidavits and thereafter to consider the cases submitted for resolution (Rec., pp. 199- 200).

14. On August 15, 1991, petitioners filed a 'Counter-Comment On Respondent's Comment of [sic] Motion For Early Decision' alleging that under Rule VII, Section 10 (c) of the Revised Rules of Court of the NLRC which reads:

> 'x x x
>
> c) In case of unjustified non-appearance by the respondent during her/his turn to present evidence, despite due notice, the case shall be considered submitted for decision on the basis of the evidence so far presented.'

the non-appearance of Lhuillier or its counsel on the scheduled dates of hearing on July 8 and 12, 1991, was clearly unjustified (Rec., pp. 202-205).

15. On October 14, 1991, Atty. Seno filed a Motion Reiterating The Request For Submission Of Additional Affidavits therein alleging that Lhuillier's previous motion to present additional affidavits had not been acted upon; and that he had not received an order considering the instant case submitted for resolution. With the motion, Lhuillier submitted the affidavits of additional witnesses, praying that said supplemental affidavits be admitted and presentation of additional evidence be allowed (Rec., pp. 207-209).

16. On October 16, 1991, petitioners filed an Opposition On [sic] Respondents' Request For Submission Of Additional Affidavits And Urgent Motion To Release Decision, alleging that counsel for Lhuillier was given ample opportunity to present his evidence; that by his failure to appear at the scheduled hearings without any reason or prior motion for postponement, he was deemed to have waived his right to present evidence; and that about the later part of August 1991, upon learning that Labor Arbiter Velasquez would be transferred to NLRC, Tacloban, they (petitioners) inquired about the status of the instant case and they were informed

> by Labor Arbiter Velasquez that a Decision was already rendered (Rec., pp. 203-205)."

On August 30, 1991, the labor arbiter rendered a decision in favor of petitioners. On appeal, Respondent NLRC vacated the labor arbiter's order and remanded the case for further proceedings. It subsequently denied the motion for reconsideration.

Respondent NLRC's Ruling

Ruled the NLRC:[8]

> "In resolving this issue [of due process], it is necessary to go over the pertinent provisions of the 1990 NLRC Rules of Procedure, more particularly Sec. 11, Rule V.
>
> Rule V — Proceedings Before the Labor Arbiters:
>
> Section 11. Non-appearance of Parties at Conference/Hearings. — (a) Two (2) successive absences at a conference/hearing by the complainant or petitioner, who was duly notified thereof may be sufficient cause to dismiss the case without prejudice. Where proper justification, however, is shown by proper motion to warrant the re-opening of the case, the Labor Arbiter shall call a second hearing and continue the proceedings until the case is finally decided. Dismissal of the case for the second time due to the unjustified non-appearance of the complainant or petitioner who was duly notified thereof shall be with prejudice.
>
> b) In case of two (2) successive non-appearances by the respondent, despite due notice, during the complainant's presentation of evidence, the complainant shall be allowed to present evidence ex-parte, subject to cross-examination by the respondent, where proper, at the next hearing. Upon completion of such presentation of evidence for the complainant, another notice of hearing for the reception of the respondent's evidence shall be issued, with a warning that failure of the respondent to appear shall be construed as submission by him of the case for resolution without presenting his evidence.

c) In case of two (2) successive unjustified non-appearances by the respondent during his turn to present evidence, despite due notice, the case shall be considered submitted for decision on the basis of the evidence so far presented.

The established fact is that July 8 and 12, 1991 were the scheduled dates for the cross-examination of Marilyn Lim, last witness for the complainants and the start of respondents' presentation of evidence. It is also not disputed that respondent and counsel failed to appear at the July 8 hearing. A scrutiny of the minutes of the July 8, 1991 hearing would however reveal that date was alloted [sic] purposely for the cross-examination of Marilyn Lim and that respondents' presentation of evidence would start on July 12, 1991, (page 176 records) Technically, the Labor Arbiter was correct in ruling that respondent had waived her right to cross-examine complainant Marilyn Lim when she failed to appear on July 8, 1991. But definitely, it was error for him to consider the case submitted for decision when respondent failed to appear on July 12, 1991. The above-cited rules are clear and explicit. It takes two successive and unjustified non-appearance on the part of respondent before he or she can be considered to have waived his/her right to present evidence and thereafter to consider the case submitted for decision on the basis of the evidence thus far presented. Respondent's absence on July 12, 1991 was but her first since, as pointed out, it was on that day that she was supposed to start presenting her evidence. What the Labor Arbiter should have done was to set another date for the reception of respondent's evidence. If she still failed to appear, his reliance on Sec. 11 (c), Rule V of the New Rules of Procedure of the NLRC would have been justified and this Commission would not hesitate to uphold him on that respect. As it is, the questioned ruling was, indeed, premature to say the least. While concern for the less privileged workers and speeding [sic] the disposition of labor cases are highly commendable, those considerations should not run roughshod over well-established principles of due process.

It may be argued that the evidence sought to be introduced by respondent are contained in the additional affidavits which now

> form part of the records, hence this Commission can now decide this appeal on the merits. It is with more reason that this case should be remanded not only to allow respondent to formally present her evidence, but also to allow complainants to cross-examine and confront their accusers." (Emphasis supplied.)

Not satisfied, petitioners filed the present petition before us under Rule 65 of the Rules of Court.[9]

The Issues

Petitioners submit to this Court the following issues:[10]

> "A
>
> The Honorable Commission has committed serious reversible error amounting to a grave abuse of discretion and in excess of jurisdiction in finding that the private respondent was not afforded due process by the hearing labor arbiter, particularly the reception of private respondent's evidence.
>
> B
>
> The Honorable Commission has committed serious reversible error amounting to a grave abuse of discretion and in excess of jurisdiction in finding that the declaration by the hearing labor arbiter submitting these cases for decision on July 12, 1991 was not in accordance with Rule V Section II of the 1990 New Rules of Procedure of the NLRC (attached hereto as annex 'C').
>
> C
>
> The Honorable Commission has committed serious reversible error amounting to a grave abuse of discretion and in excess of jurisdiction in giving importance to private respondent's additional alleged affidavits which were filed only on October 14, 1991 (attached hereto as annex 'G-1'), by way of attaching the same in private respondent's motion reiterating request for submission of additional affidavits (attached hereto as annex

'G'), long after the hearing labor arbiter rendered a decision on August 30, 1992 (attached hereto as annex 'E'), contrary to the private respondent's prayer and commitment (attached hereto as annex 'F-1').

D

The Honorable Commission has committed serious reversible error amounting to a grave abuse of discretion, in substance and in law, in not modifying the appealed decision of the hearing labor arbiter (attached hereto as annex 'E') with respect to the accuracy of the monetary awards pursuant to the pertinent provisions of the Labor Code, its implementing rules and regulations and pursuant particularly to the celebrated case of Roche (Philippines), et als. [sic] vs. NLRC, et als., [sic] G.R. No. 83335, October 12, 1989.

E

The Honorable Commission has no jurisdiction to entertain private respondent's two appeals."

Put differently but more plainly, the issues in this case are as follows:

1. Did the NLRC acquire jurisdiction over the appeal notwithstanding the alleged insufficiency of the appeal bond?

2. Were private respondents deprived of due process of law by the labor arbiter?

3. Were petitioners illegally dismissed?

4. Assuming petitioners were illegally dismissed, was the computation of the backwages, service incentive leave pay and damages valid and correct?

The Court's Ruling

The petition is meritorious. We hold that the private respondents were not denied due process of law by the labor arbiter; and that nine of the petitioners were illegally dismissed, but that Petitioners Lim and Canonigo were not.

First Issue: Insufficiency of Appeal Bond

Petitioners contend that Respondent NLRC did not acquire jurisdiction over the appeal of private respondents because the appeal bond was insufficient. Although the total monetary award in their favor was P1,078,200.55, private respondents posted a cash bond in the amount of P752,183.00 only. In computing the monetary award for the purpose of posting an appeal bond, private respondents relied on Rule VI, Section 6 of the 1990 New Rules of Procedure of the NLRC and excluded the award for damages, litigation expenses and attorney's fees. Petitioners argue however that the said rule cannot prevail over Article 223 of the Labor Code, which does not provide for such exclusion.

We agree with private respondents. Article 223 of the Labor Code provides:

x x x

> In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.
>
> In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be 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 therein." (Emphasis supplied.)

On the other hand, Rule VI, Section 6 of the 1990 NLRC New Rules of Procedure,[11] invoked by private respondent, provides:

> "Section 6. Bond. — In case of the decision of a Labor Arbiter involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award.
>
> The Commission may, in meritorious cases and upon Motion of the Appellant, reduce the amount of the bond. However, an appeal is deemed perfected upon the posting of the bond equivalent to the monetary award exclusive of moral and exemplary damages as well as attorney's fees.
>
> Nothing herein however, shall be construed as extending the period of appeal." (Emphasis supplied.)

There is no conflict between the two provisions. Article 223 lays down the requirement that an appeal bond should be filed. The implementing rule, on the other hand, explains how the appeal bond shall be computed. The rule explicitly excludes moral and exemplary damages and attorney's fees from the computation of the appeal bond. This exclusion has been recognized by the Court in a number of cases. Hence, in Erectors vs. NLRC,[12] the Court nullified an NLRC order requiring the posting of an appeal bond which, among others, "even included in the computation the award of P400,000.00 for moral and exemplary damages." Indeed, the said implementing rule is a contemporaneous construction of Article 223 by the NLRC pursuant to the mandate of the Labor Code; hence, it is accorded great respect by this Court.[13]

In line with the desired objective of our labor laws to resolve controversies on their merits, the Court has held that the filing of a bond in appeals involving monetary awards should be given liberal construction.[14] The rule requiring the employer to post a cash or

surety bond to perfect his appeal assures the workers that they will receive the money judgment awarded to them upon the dismissal of the employer's appeal. It also discourages employers from using an appeal to delay or even evade their obligation to satisfy the just and lawful claims of their employees.[15]

Hence, deducting from the total monetary award of P1,078,200.55 the amount of P200,000.00 for moral and exemplary damages, P98,018.25 for attorney's fees and P30,000.00 for litigation expenses, the amount of the bond should be P750,182.55. Thus, the appeal bond actually posted in the amount of P752,183 is even more than the amount of appeal bond that may be required from private respondents under Respondent NLRC's rules.

Second Issue: No Denial of Due Process

The NLRC ruled that private respondents were denied due process because the labor arbiter deemed the case submitted for resolution when they failed to attend the hearings on July 8 and 12, 1991. Under the NLRC Rules of Procedure, a case may be deemed submitted for decision on the basis of the evidence thus far adduced in the event respondent incurs two successive absences "during his turn to present evidence." While the hearing on July 12, 1991 was for the presentation of herein private respondents' evidence, the NLRC found that the hearing on July 8, 1991 was scheduled for the cross-examination of petitioners' witness. Since the absences were not made during respondents' "turn to present evidence," public respondent remanded the case to the labor arbiter for "further proceedings."

Petitioners dispute the NLRC ruling, contending that the parties in this case were able to submit their respective position papers together with supporting affidavits and other documents. They stress that private respondents' failure to attend the hearings on July 8 and 12, 1991, without any justification or motion for postponement, warranted the submission of the case for decision pursuant to Section 11, Rule V of the 1990 New Rules of Procedure of the NLRC. They insist that the hearing on July 8, 1991 was scheduled to afford private respondents not only an opportunity "to cross-examine petitioner's last witness, Marilyn Lim, [but also] to start the presentation of their evidence."[16]

On the other hand, private respondents argue that the labor arbiter erred in considering the absence of their counsel during the hearings scheduled on July 8 and July 12, 1991 as waiver not only of the right to cross-examine but of the right to present evidence. They further contend that the labor arbiter released his decision notwithstanding the pendency of three unresolved motions.[17] These circumstances clearly show that they were not afforded due process of law.[18]

To make a clear ruling, we again cite Rule V, Section 11 of the 1990 Rules of Procedure of Respondent NLRC, which provides:

> "Section 11. Non-appearance of Parties at Conference/Hearings. — (a) Two (2) successive absences at a conference/hearing by the complainant or petitioner, who was duly notified thereof, may be sufficient cause to dismiss the case without prejudice. Where proper justification, however, is shown by proper motion to warrant the re-opening of the case, the Labor Arbiter shall call a second hearing and continue the proceedings until the case is finally decided. Dismissal of the case of the second time due to the unjustified non-appearance of the complainant or petitioner who was duly notified thereof shall be with prejudice.
>
> (b) In case of two (2) successive non-appearances by the respondent, despite due notice, during the complainant's presentation of evidence, the complainant shall be allowed to present evidence ex parte, subject to cross-examination by the respondent, where proper, at the next hearing. Upon completion of such presentation of evidence for the complainant, another notice of hearing for the reception of the respondent's evidence shall be issued, with a warning that failure of the respondent to appear shall be construed as submission by him of the case for resolution without presenting his evidence.
>
> (c) In case of two (2) successive unjustified non-appearances by the respondent during his turn to present evidence, despite due notice, the case shall be considered submitted for decision on the basis of the evidence so far presented." (Emphasis supplied).

It is undisputed that private respondents' counsel failed to attend the hearings on the two aforementioned dates. Moreover, the Labor Arbiter[19] and the NLRC held that the hearing on July 8, 1991 was only for the cross-examination of herein petitioners' witness, while that on July 12, 1991 was for the reception of private respondents' evidence. This notwithstanding, we hold that the NLRC committed grave abuse of discretion in remanding the case to the labor arbiter.

Private respondents were able to file their respective position papers and the documents in support thereof, and all these were duly considered by the labor arbiter.[20] Indeed, the requirements of due process are satisfied where the parties are given the opportunity to submit position papers.[21] In any event, Respondent NLRC and the labor arbiter are authorized under the Labor Code to decide a case on the basis of the position papers and documents submitted.[22] The holding of an adversarial trial depends on the discretion of the labor arbiter, and the parties cannot demand it as a matter of right. In other words, the filing of position papers and supporting documents fulfilled the requirements of due process.[23] Therefore, there was no denial of this right because private respondents were given the opportunity to present their side.[24]

Moreover, it should be noted that private respondents did not dispute the order of the labor arbiter submitting the case for decision immediately after its issuance. Likewise, they failed to present additional evidence on the date they themselves specified. It was only on August 6, 1991 that private respondents' counsel, in his Comments to the Offer of Exhibits[25] with counter-manifestation, explained his failure to appear at the hearing on July 8, 1991. His explanation, quoted below, is not compelling:[26]

> "The failure of the undersigned to appear on the date of hearing was for the reason that his car bogged down, as in fact he called up the Office of the Hearing Officer. While his absence may be considered a waiver to cross-examine the witness, it cannot be taken to mean forfeiture of the right to present admissible evidence against the complainant-witness."

Three days later on August 9, 1991, private respondents moved that they be given a "period of ten days from August 9, 1991" — or until August 19, 1991 — within which to submit additional affidavits, "after which, the cases will be deemed submitted for resolution on the basis of complainants' evidence and respondents' position paper and the additional affidavits."[27] Counsel, however, failed to submit the supposed evidence on said date. On October 14, 1991, private respondents filed a Motion Reiterating the Request for Submission of Additional Affidavits.[28] Again, private respondents did not submit the said documents.

As earlier noted, the essence of due process is simply an opportunity to be heard, to explain one's side, or to seek a reconsideration of the action or ruling complained of. In the case at bar, private respondents were given ample opportunity to do just that but they failed, for unknown reasons, to avail themselves of such opportunity. They themselves moved that they be allowed to present additional affidavits on August 19, 1991, but they never did; no valid reason was given for their failure to do so. Their contention that the labor arbiter failed to rule on their motion deserves scant consideration. It is axiomatic — in fact, it is plainly commonsensical — that when a counsel asks for an extension of time within which to file a pleading, he must be ready with that pleading on the date specified in his motion, even absent a resolution or order disposing of his motion.

We cannot remand the instant case to the labor arbiter for further proceedings. Respondent NLRC, on the basis of the evidence on record, could have resolved the dispute. To remand it to the labor arbiter is to delay needlessly the disposition of this case, which has been pending since July 23, 1990. It becomes our duty under the circumstances to determine the validity of the allegations of the parties. Remanding the case to the labor arbiter will just frustrate speedy justice and, in any event, would be a futile exercise, as in all probability the case would end up with this Court. We shall thus rule on the substantial claims of the parties.

Third Issue: Petitioners Were Illegally Dismissed

Private respondents controvert the claim of illegal dismissal by maintaining that petitioners abandoned their employment. They aver

that on July 19, 1990, Petitioner Gloria Adriano, pawnshop appraiser, over-declared the weights and values of pawned pieces of jewelry, which allegedly caused a loss of at least P174,850. In a letter dated July 19, 1990, they required Petitioner Adriano to explain within 72 hours why her employment should not be terminated. On July 20, 1990, however, Petitioner Adriano together with Petitioners Asteria Campo, Leiden Fernandez, Brenda Gadiano, Emilia Negapatan, Eleonor Quiñanola, Jesus Tomongha, Florida Talledo and Florida Villaceran allegedly did not report for work without any excuse. Thus, private respondents concluded that petitioners abandoned their employment. They also state that they intended to pursue legal action against the said petitioners for "illegal abandonment." But before they could do so, they received summons requiring them to respond to the complaints of illegal dismissal filed by the said nine petitioners.[29]

On the other hand, petitioners maintain that on July 19, 1990, Private Respondent Marguerite Lhuillier, the pawnshop owner, told them not to report for work because their employment had been terminated. Thus, they did not report for work the following day; July 20, 1990. On July 23, 1990, they filed their respective complaints before the Regional Arbitration Board of Respondent NLRC.

In view of the conflicting claims of the parties, we examined the records of this case and found that private respondents did not abandon their employment; rather, they were illegally dismissed.

To succeed in pleading abandonment as a valid ground for dismissal, the employer must prove (1) the intention of an employee to abandon his or her employment and (2) an overt act from which such intention may be inferred; i.e., the employee showed no desire to resume his work.[30] Mere absence is not sufficient. The employer must prove a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[31] Private respondents failed to discharge this burden. The claim of abandonment was inconsistent with the immediate filing of petitioners' complaint for illegal dismissal and prayer for reinstatement. For how can an inference be made that an employee had no intention of returning to work, when he filed a complaint for illegal dismissal praying for reinstatement three days after the alleged abandonment?[32] Moreover, considering that petitioners had been

with Pawnshop Lhuillier for several years — ranging from six (6) years to thirty three (33) years — it is unlikely that they would simply leave their employment. Clearly, there is no cogent basis for private respondents' theory that said petitioners abandoned their work. In this light, we sustain the finding of the labor arbiter that said petitioners were illegally dismissed, with neither just cause nor due process.

Petitioners Lim and Canonigo Resigned

The foregoing holding cannot apply to Petitioners Marilyn Lim and Joseph Canonigo, however.

Lim claims that Private Respondent Lhuillier forced her to resign, but at the same time assured her of separation pay.[33] On February 5, 1990, prior to Lim's letter of resignation dated February 24, 1990,[34] her lawyer proposed the following to Private Respondent Lhuillier:[35]

> "1. That our client Ms. Marilyn Lim be given immediately a clearance upon resignation from your good company and payment of separation pay at the rate of one month per year of service;
>
> 2. That our client is willing to execute a promissory note on her indebtedness, and will pay upon the same terms prevailing before her resignation. Our client's ability to settle her indebtedness should be given kind consideration by your company considering that her eventual resignation will render her jobless for a while. Besides, per Investigation Report No. 2, Series of 1990, conducted by your Resident Counsel, Atty. Malcolm V. Seno, our client has impressed your Resident Counsel as a person of much valor and great determination when she immediately admitted her guilt; and
>
> 3. That the various checks she endorsed to your company be returned to our client, so that she could file a case against the issuers or drawers of the same, be it criminal or civil in nature." (Emphasis supplied).

Petitioner Lim's testimony[36] that she has never been informed of any wrongdoing until her termination is belied by her assertions in the aforequoted letter. Her admission of the offense charged shows that she was not coerced to resign. Besides, the fact that her complaint for illegal dismissal was filed long after her resignation on February 24, 1990 suggests that it was a mere afterthought.

On the other hand, Petitioner Canonigo contends that he was forced to sign his letter of resignation dated July 14, 1990, because Private Respondent Lhuillier received reports from other employees that he was responsible for some anomalies in the pawnshop. He also stated that he resigned because he was assured of separation pay. [37] Like Petitioner Lim, he did not immediately file a complaint for illegal dismissal, doing so only on July 23, 1990. From the foregoing facts, we see no cogent basis for holding that he was forced to resign. On the contrary, we find that he voluntarily tendered his resignation on the assurance of separation pay. Clearly, Petitioner Canonigo, like Lim, was not dismissed; rather, he resigned voluntarily.

Fourth Issue: Service Incentive Leave Pay and Damages

In his decision, the labor arbiter granted varying amounts of service incentive leave pay to the petitioners based on the length of their tenure; i.e, the shortest was six years and the longest was thirty-three years. While recommending that the labor arbiter's decision be reinstated substantially, the solicitor general recommended that the award of service incentive leave be limited to three years. This is based on Article 291 of the Labor Code which provides:

> "ART. 291. Money Claims. — All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.
>
> x x x
>
> Petitioners counter that Article 291 "speaks clearly on the prescription of filing [an] action upon monetary claims within three (3) years from the time the cause of action accrued, but it

> is not a prescription of a period of time for the computation of monetary claims."[38]

The clear policy of the Labor Code is to grant service incentive leave pay to workers in all establishments, subject to a few exceptions. Section 2, Rule V, Book III of the Implementing Rules and Regulations[39] provides that "[e]very employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay." Service incentive leave is a right which accrues to every employee who has served "within 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contracts, is less than 12 months, in which case said period shall be considered as one year."[40] It is also "commutable to its money equivalent if not used or exhausted at the end of the year."[41] In other words, an employee who has served for one year is entitled to it. He may use it as leave days or he may collect its monetary value. To limit the award to three years, as the solicitor general recommends; is to unduly restrict such right. The law indeed does not prohibit its commutation. Moreover, the solicitor general's recommendation is contrary to the ruling of the Court in Bustamante et al. vs. NLRC et al.,[42] lifting the three-year restriction on the amount of backwages and other allowances that may be awarded an illegally dismissed employee, thus:

> "Therefore, in accordance with R.A. No. 6715, petitioners are entitled to their full backwages, inclusive of allowances and other benefits or their monetary equivalent, from the time their actual compensation was withheld from them up to the time of their actual reinstatement." (Emphasis supplied.)

Since a service incentive leave is clearly demandable after one year of service — whether continuous or broken — or its equivalent period, and it is one of the "benefits" which would have accrued if an employee was not otherwise illegally dismissed, it is fair and legal that its computation should be up to the date of reinstatement as provided under Section 279 of the Labor Code, as amended, which reads:

> "ART. 279. Security of Tenure. — An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation is withheld from him up to the time of his actual reinstatement." (Emphasis supplied).

However, the Implementing Rules clearly state that entitlement to "benefit provided under this Rule shall start December 16, 1975, the date the amendatory provision of the [Labor] Code took effect."[43] Hence, petitioners, except Lim and Canonigo, should be entitled to service incentive leave pay from December 16, 1975 up to their actual reinstatement.

Petitioners, citing Roche Philippines et al. vs. NLRC et al.,[44] further contend that the award of damages in the case at bar should be increased, for "there are eleven (11) complainants/petitioners whose long years of employment was illegally, oppressively and wantonly terminated by the private respondent."[45]

We disagree. Determination of the amount of moral damages and attorney's fees is best left to the discretion of the labor arbiter.[46] Moral damages are recoverable where the dismissal of the employee was attended by bad faith or fraud, or it constituted an act oppressive to labor, or it was done in a manner contrary to morals, good customs or public policy.[47] In the case before us, records show that petitioners' dismissals were done oppressively and in bad faith, for they were just summarily dismissed without even the benefit of notice and hearing. The well-settled rule is that the employer shall be sanctioned for noncompliance with the requirements of, or for failure to observe, due process in dismissing its employees.[48] Petitioners were likewise subjected to unnecessary embarrassment or humiliation because of the filing of the criminal charge of qualified theft, which was later dismissed[49] by the investigating prosecutor.[50] It follows then that the award of attorney's fees is likewise proper, for the "defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest."[51]

Full Backwages for Dismissals Effected After March 21, 1989

Having determined that petitioners, except Lim and Canonigo, were illegally dismissed, we next resolve the question of whether Respondent NLRC gravely abused its discretion in ordering the reinstatement of dismissed employees and the payment to them of full backwages; or, if reinstatement was no longer feasible, whether the grant to them of separation pay plus backwages was correct. In several cases,[52] this Court has held that illegally dismissed employees are entitled to reinstatement and full backwages. If reinstatement is not possible, the employees are entitled to separation pay and full backwages. Accordingly, the award to petitioners of backwages for three years should be modified in accordance with Article 279[53] of the Labor Code, as amended by R.A. 6715, by giving them full backwages without conditions and limitations, the dismissals having occurred after the effectivity of the amendatory law on March 21, 1989.[54] Thus, the Court held in Bustamante:[55]

> "The clear legislative intent of the amendment in Rep. Act No. 6715 is to give more benefits to workers than was previously given them under the Mercury Drug rule or the "deduction of earnings elsewhere" rule. Thus, a closer adherence to the legislative policy behind Rep. Act No. 6715 points to "full backwages" as meaning exactly that, i.e., without deducting from backwages the earnings derived elsewhere by the concerned employee during the period of his illegal dismissal."

WHEREFORE, the petition is hereby **GRANTED** and the assailed Decision and Resolution are **REVERSED** and **SET ASIDE**. The labor arbiter's decision is **REINSTATED** with **MODIFICATIONS**, such that the award of separation pay is deleted and the service incentive leave pay is computed from December 16, 1975 up to petitioners' actual reinstatement. Full backwages, including the accrued thirteenth month pay, are also awarded to the nine petitioners — Leiden Fernandez, Brenda Gadiano, Gloria Adriano, Emelia Negapatan, Jesus Tomongha, Eleonor Quiñanola, Asteria Campo, Florida Villaceran and Florida Talledo — from the date of their illegal dismissal to the time of their actual reinstatement.

Petitioners Lim and Canonigo, whom we find to have voluntarily resigned, are not entitled to any benefit.

SO ORDERED.

Narvasa, *C.J.*, Romero, Melo and Francisco, *JJ.*, concur.

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[1] Spelled "Marguerite" in the petition, it was "Margueritte" in the OSG's Comment dated December 21, 1992.
[2] Rollo, pp. 154-158.
[3] Fourth Division, composed of Commissioner Bernabe S. Batuhan, ponente; and Presiding Commissioner Ernesto G. Ladrido III and Commissioner Irenea B. Ceniza, concurring.
[4] Decision, p. 5; rollo, p. 153.
[5] Rollo, pp. 79-109.
[6] Labor Arbiter's decision, pp. 29-31; rollo, pp. 107-109.
[7] Rollo, pp. 203-214. There was no paragraph no. 4 in this Comment.
[8] Rollo, pp. 155-158.
[9] The case was deemed submitted for resolution upon the posting of private respondent's memorandum on October 18, 1996. (Rollo, p. 380.)
[10] Rollo, pp. 18-20; original text in upper case.
[11] Effective October 9, 1990. (Diola vs. National Labor Relations Commission, 222 SCRA 860, May 31, 1993.). Although this section was amended on November 5, 1993, its provision for the computation of the bond remains essentially the same.
[12] 202 SCRA 597, October 10, 1991, per Narvasa, J. (now Chief Justice). See also Star Angel Handicraft vs. NLRC, 236 SCRA 580; September 20, 1994.
[13] Bagatsing vs. Committee on Privatization, 246 SCRA 334, July 14, 1995 citing Nestle Philippines, Inc. vs. Court of Appeals, 203 SCRA 504, November 13, 1991; Enrique vs. Court of Appeals, 229 SCRA 180, 186, January 10, 1994 citing Soriano vs. Offshore Shipping and Manning Corporation, 177 SCRA 513, September 14, 1989.
[14] Manila Mandarin Employees Union vs. NLRC, 264 SCRA 320, 331, November 19, 1996; Star Angel Handicraft vs. National Labor Relations Commission, 236 SCRA 580, September 20, 1994; Blancaflor vs. National Labor Relations Commission, 218 SCRA 366, February 2, 1993; Rada vs. National Labor Relations Commission, 205 SCRA 69, January 9, 1992; Erectors, Inc. vs. NLRC, 202 SCRA 597, October 10, 1991; YBL (Your Bus Line) vs. National Labor Relations Commission, 190 SCRA 160, September 28, 1990.
[15] Viron Garments Manufacturing, Co., Inc., et al, vs. NLRC et al., 207 SCRA 339, March 18, 1992.
[16] Petition, p. 19; rollo, p. 22.
[17] Rollo, p. 171. These are:

a. Urgent Motion Reiterating the Request for Submission of Additional Affidavits dated October 14, 1991 submitted by Atty. Malcolm Seno,
b. Urgent Motion to Resolve Respondents' Pending Motion and Comments on Petitioner's 'Urgent Motion To Release Decision' dated November 25, 1991 submitted by Atty. Luis V. Diores,
c. Urgent Motion to Allow Respondents to Cross-Examine Complainants and To Present Evidence Under Rule V, Sec. 11(b) and (c) of the New Rules of Procedure of the NLRC."

[18] Rollo, pp. 170-172.

[19] Labor arbiter's decision, p. 25; rollo, p. 103. The labor arbiter held that "[o]n July 8, 1991 and July 12, 1991, the scheduled dates for the respondent to cross-examine complainant, Marilyn Lim and for the respondent to present her evidence, respectively, respondent and her counsel without giving reason nor filed [sic] any motion to postpone failed to appear on the said scheduled dates." (Emphasis supplied). In effect, the labor arbiter belied petitioners' contention that the hearing on July 8, 1991 was for the cross-examination of the petitioners witness and for the reception of private respondents' evidence.

[20] Ibid., pp. 27-28; rollo, pp. 105-106.

[21] Odin Security Agency vs. De la Serna et al., 182 SCRA 479, 479, February 21, 1990; Pacific Timber Export Corp. vs. NLRC, 224 SCRA 860, July 30, 1993.

[22] Cagampan et al. vs. NLRC et al., 195 SCRA 533, 539, March 22, 1991; Salonga vs. National Labor Relations Commission, 254 SCRA 111, 115, February 23, 1996 citing Lawrence vs. National Labor Relations Commission, 205 SCRA 737, 750, February 4, 1992. See also Pacific Timber Export Corp. vs. NLRC, 224 SCRA 860, 862, July 30, 1993; Commando Security Agency vs. NLRC , 211 SCRA 645, 649, July 20, 1992; Robusta Agro Marine Products, Inc. vs. Gorombalem, 175 SCRA 93, 98, July 5, 1989.

[23] Yap vs. Inciong, 186 SCRA 664, June 21, 1990; B. Sta Rita & Company, Inc. vs. Arroyo and NLRC, 168 SCRA 581, December 20, 1988.

[24] Divine Word High Schools vs. NLRC, 143 SCRA 346, August 6, 1986; Municipality of Daet vs. Hidalgo Enterprises, Inc., 138 SCRA 265, August 28, 1985.

[25] Rollo, pp. 75-77.

[26] Comments to the Offer of Exhibits, p. 2; rollo, p. 76.

[27] Ibid.

[28] Rollo, pp. 112-114.

[29] NLRC Records, p. 116; rollo, pp. 89-92.

[30] Jackson Building Condominium Corporation vs. National Labor Relations Commission, 246 SCRA 329, 332, July 14, 1995; Wyeth-Suaco Laboratories, Inc. vs. National Labor Relations Commission, 219 SCRA 356, March 2, 1993; Dagupan Bus Co., Inc. vs. NLRC, 191 SCRA 328, November 9, 1990.

[31] Labor vs. National Labor Relations Commission, 248 SCRA 183, 198, September 14, 1995 citing Kingsize Manufacturing Corp. vs. NLRC, 238 SCRA 349, November 24, 1994; F.R.F. Enterprises, Inc. vs. NLRC, 243 SCRA 593, April 21, 1995.

[32] Jackson Building Condominium Corporation vs. National Labor Relations Commission, supra, at pp. 332-333; Remerco Garments Manufacturing vs. Minister of Labor and Employment, 135 SCRA 167, February 28, 1985; Judric Canning Corp. vs. Inciong, 115 SCRA 887, August 19, 1982.
[33] NLRC Records, pp. 312-313; TSN, February 27, 1991, pp. 19-20.
[34] NLRC Records, p. 113.
[35] NLRC Records, pp. 111-112.
[36] TSN, February 27, 1991, p. 13.
[37] NLRC Records, pp. 326-327; TSN, February 27, 1991, pp. 33-34.
[38] Rollo, p. 242; underscoring omitted.
[39] Entitled "Right to service incentive leave."
[40] Section 3, Rule V, Book III, Implementing Rules and Regulations of the Labor Code.
[41] Section 5, Rule V, Book III, Implementing Rules and Regulations of the Labor Code.
[42] G.R. No. 111651, pp. 8-9, November 28, 1996, per Padilla, J.
[43] Section 4, Rule V, Book III, Implementing Rules and Regulations of the Labor Code.
[44] 178 SCRA 386, October 5, 1989, per Gancayco, J.
[45] Rollo, p. 243; emphasis omitted.
[46] Cf . Suario vs. Bank of the Philippine Islands, 176 SCRA 688, 696, August 25, 1989 citing Primero vs. Intermediate Appellate Court, 156 SCRA 435, December 14, 1987.
[47] Article 2220 of the New Civil Code.
[48] Magnolia Dairy Products Corp. vs. NLRC, 252 SCRA 483, 491, January 29, 1996.
[49] As of the filing of petition on June 10, 1992, a petition for review of the dismissal was still pending at the Department of Justice.
[50] Roche (Philippines) vs. National Labor Relations Commission, 178 SCRA 386, 397, October 5, 1989; Lopez vs. Javier, 252 SCRA 68, 79, January 22, 1996 citing Spartan Security and Detective Agency, Inc. vs. NLRC et al., 213 SCRA 528, 1992; Octot vs. Ybañez, 111 SCRA 79.
[51] Article 2208, paragraph (2) of the Civil Code.
[52] Citytrust Banking Corporation vs. NLRC, 258 SCRA 621, 630, July 11, 1996 citing Article 279 of the Labor Code as amended by R.A 6715; Gold City Integrated Port Service, Inc. vs. National Labor Relations Commission, 245 SCRA 627, July 6, 1995; Torillo vs. Leogardo, 197 SCRA 471, May 27, 1991; Indophil Acrylic Mfg. Corp. vs. NLRC, 226 SCRA 723, September 27, 1993; Quiñones vs. National Labor Relations Commission, 246 SCRA 294, 298, July 14, 1995; Molave Tours Corporation vs. National Labor Relations Commission, 250 SCRA 325, 329, November 24, 1995; Polymedic General Hospital vs. NLRC, 134 SCRA 420, January 31, 1985; Egyptair vs. National Labor Relations Commissions, 148 SCRA 125, February 27, 1987.
[53] "Article 279. Security of Tenure. [as amended by Section 34 of R.A 6715. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to

reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement."

[54] Bustamante vs. NLRC, supra.

[55] Ibid., p. 8.