SUPREME COURT
FIRST DIVISION

FILFLEX INDUSTRIAL & MANUFACTURING CORPORATION and/or CELIA BUENCONSEJO,
***Petitioner*,**

-versus-

G.R. No. 115395
February 12, 1998

NATIONAL LABOR RELATIONS COMMISSION, NATIONAL FEDERATION OF LABOR UNIONS (NAFLU) AND SALUD GALING,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

Is an employee entitled to back wages during the pendency of her appeal before the NLRC, even if the assailed labor arbiter's decision

did not order her reinstatement? May the NLRC decree back wages where the employee's dismissal was legal?

The Case

The Court answers these questions in the negative in granting this petition for certiorari under Rule 65 of the Rules of Court assailing the October 29, 1993 Resolution[1] of the National Labor Relations Commission[2] (NLRC) which disposed as follows:[3]

> "WHEREFORE, the assailed Decision is hereby set aside and a new one is entered dismissing the complaint for lack of merit.
>
> However, respondents [petitioners herein] are ordered to pay complainant [private respondent herein] her salaries from the date of the filing of the instant appeal on April 10, 1992 up to the date of the promulgation of this Resolution, pursuant to Art. 223 of the Labor Code, as amended."

Petitioners also challenge the NLRC's Resolution dated February 7, 1994 which denied their subsequent motion for reconsideration, for lack of merit.

The labor arbiter's decision, which the NLRC set aside, in NLRC NCR Case No. 00-02-01060-91 dated March 10, 1992 disposed as follows:[4]

> "WHEREFORE, based on the foregoing considerations, judgment is hereby rendered declaring the dismissal of complainant improper and unjust. Accordingly, respondent is hereby ordered to pay the complainant limited backwages and other benefits for six (6) months in the amount of P18,252.00.
>
> Considering however the physical condition of the complainant that was the real cause of her absences and tardiness, it would be to their mutual advantage and most importantly to the physical and health welfare of complainant that she is separated from the service with separation benefits equivalent to ½ month basic salary for every year of service, a fraction of six (6) months equivalent to one year in the amount of P22,815.00.

The charge of unfair labor practice is hereby denied for lack of legal basis.

Individual respondent Celia Buenconsejo is hereby absolved of any liability for she acted only in her official capacity.

Other claims are denied for lack of merit."

The Facts

Labor Arbiter Daniel C. Cueto recited the facts of this case as follows:[5]

> "Complainant is a sewer who started working with respondent in November 1975. She was dismissed for abandonment on February 11, 1991. At the time of her dismissal, she was receiving a salary of P117.00 per day of work. She claimed that while it is true that she was absent from November 30, 1990 up to December 11, 1990, her dismissal on ground of abandonment is not in consonance with law considering that her absences was [sic] attributable to chronic ashmatic [sic] bronchitis which she contacted since early 1990 yet. She presented as evidence the medical certificate dated March 4, 1991 attesting for [sic] her medical treatment covering the period January 1990 to May 28, 1990. She claims that her failure to report for work for 11 days was due to sickness wherein respondents were notified by her through the telephone. Complainant argued that she did not abandon her job and that is evidenced by her immediate filing of instant complaint on February 8, 1991. Her 16 years of service, according to complainant, should have been considered by respondents before she was dismissed. She prays for reinstatement plus backwages and also for damages.
>
> Respondents contended otherwise. It is their position that complainant was hired on February 5, 1978 and that since the early period of her employment, she committed various violations of company rules and regulations ranging from habitual tardiness to frequent absences. Said misdemeanor registered the highest number of tardiness in the second

> quarter of 1984 numbering 45 times from 37 times in the first quarter of 1984 whereas in terms of monthly tardiness, complainant incurred 21 times in March and June, both in 1990 the said tardiness covered by corresponding memoranda marked as Annexes 'A' to 'L' for respondents, that despite the several warnings given, complainant persisted in her tardiness and frequent absences. By way of evidence, respondent submitted the memorandum (Annex 'O') giving complainant the stern warning for frequent absenteeism incurred in 1988 numbering 49 absences that affects her performance where the same became worse when she absented for ten (10) days in August 1989, which was the subject of another memorandum warning that management shall be constrained to take the necessary drastic action against her due to loss of productive manhours caused by complainant's excessive absences. Finally, due to complainant's absences from November 30, 1990 to December 11, 1990 the respondent issued another letter dated December 11, 1990 to complainant (Annex 'R' respondent position paper) requiring her to explain in writing within 72 hours 'why you should not be considered dismissed for having abandoned your job considering that you have been earlier served warning memos for the similar violations. Respondents stated that despite the said order, it was only on December 19, 1990 that complainant went to the office of respondent to explain. Respondents were forced to terminate complainant's employment due to her failure to report for work and explain her absence for the straight 20 days without any leave or permission for which reason they considered her continued absence as an abandonment of work."

Declaring "the dismissal of complainant improper and unjust," the labor arbiter awarded her "limited backwages and other benefits" plus separation pay equivalent to one half month for every year of service. The labor arbiter did not order her reinstatement, holding that her separation from employment would be to the parties' "mutual benefit and most importantly to the physical and health welfare of complainant."

Respondent NLRC's Ruling

On appeal, Respondent NLRC ruled that the dismissal of private respondent was justified. It held, however, that Article 223 of the Labor Code required the reinstatement of private respondent during the pendency of her appeal. Thus, it awarded back wages for the said period when the appeal was pending before it, reasoning as follows:[6]

> "Verily, respondents-appellants could no longer be faulted when they decided to terminate the services of complainant for her failure to improve her attendance despite repeated warnings.
>
> However, pursuant to Art. 223 of the Labor Code, as amended, which provides for mandatory reinstatement whether actual or on payroll, pending appeal, respondent should pay complainant her salaries from the time the appeal was filed on April 10, 1992 up to the date of the promulgation of this Resolution."

Dissatisfied, petitioners lodged this recourse before this Court. In the Resolution[7] dated June 29, 1994, this Court issued a temporary restraining order thus:[8]

> "NOW, THEREFORE, you (respondents), your officers, agents, representatives, and/or persons acting upon your orders or in your place or stead, are hereby ENJOINED from enforcing or executing the resolutions of public respondent National Labor Relations Commission dated October 29, 1993 and February 8, 1994, and in any manner or purpose continuing with the proceedings of the case in NLRC NCR Case No. 00-02-01060-91 entitled 'National Federation of Labor Unions (NAFLU) and Salud Galing vs. Filflex Industrial and Manufacturing Corporation and/or Celia Buenconsejo' of the Department of Labor and Employment."[9]

The Issue

Petitioners raise a single issue:[10]

> "Petitioners submit that the only issue is whether the public respondent NLRC committed grave abuse of discretion, amounting to lack of jurisdiction, in awarding private respondent Galing her salaries from the date of the filing of the appeal on April 10, 1992 up to the date of the promulgation of its Resolution on October 29, 1993, given the undisputed fact of her persistent, repeated, prolonged and contumacious violations of company rules and regulations."

The Court's Ruling

The petition is meritorious.

Sole Issue: Back wages During Pendency of Appeal

Petitioners argue that the "second paragraph of the dispositive portion of the Decision[11] has no basis in fact or in law." They assert that "the decision of Labor Arbiter Cueto did not call for the reinstatement of [C]omplainant Galing [private respondent herein], [thus] it follows that there is no basis now for this Honorable Commission to grant her backwages during the period of appeal. Clearly, Article 223 finds no application to the instant case."[12] They also contend that the assailed Resolution "became inconsistent with itself. For while it declared the dismissal of the complainant legal, it ruled nevertheless that [C]omplainant Galing should have been reinstated during the period of appeal."[13]

Agreeing with the petition, the solicitor general clarifies that Article 223 of the Labor Code is inapplicable to the instant case because Labor Arbiter Cueto "did not order the reinstatement of private respondent." Likewise, the government lawyer agrees that the NLRC Resolution was inherently inconsistent for holding that the dismissal of complainant Galing was justified and, at the same time, ruling that she should have been reinstated during the pendency of the appeal.[14]

On the other hand, the legal department of the NLRC[15] maintains that "reinstatement (pending appeal) whether actual or in payroll is mandatory under Art. 223 of the Code."[16]

Private respondent adds that under paragraph one, second sentence of the Labor Arbiter's decision, "there [was] a call for reinstatement of the complainant because of the backwages granted to her."[17]

We agree with the petitioners and the solicitor general.

No Order of Reinstatement

The relevant law is Article 223[18] of the Labor Code, which 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. Such appeal may be entertained only on any of the following grounds:
>
> x x x
>
> 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 herein." (Emphasis supplied.)

In other words, reinstatement during appeal is warranted only when the labor arbiter (LA) himself rules that the dismissed employee should be reinstated. In the present case, neither the dispositive portion nor the text of the labor arbiter's decision ordered the reinstatement of private respondent. Further, the back wages granted to private respondent were specifically limited to the period prior to

the filing of the appeal with Respondent NLRC. In fact, the LA's decision ordered her separation from service for the parties' "mutual advantage and most importantly to the physical and health welfare of complainant." Hence, it is an error and an abuse of discretion for the NLRC to hold that the award of limited back wages, by implication, included an order for private respondent's reinstatement.

An order for reinstatement must be specifically declared and cannot be presumed; like back wages, it is a separate and distinct relief given to an illegally dismissed employee.[19] There being no specific order for reinstatement and the order being for complainant's separation, there can be no basis for the award of salaries/back wages during the pendency of appeal.

NLRC Found Dismissal Justified

In addition to the foregoing discussion, there is an equally cogent reason to sustain the petition. Before reinstatement or back wages may be granted, there must be unjust or illegal dismissal from work.[20] The labor arbiter ruled that private respondent's "absences and tardiness by itself are sufficient ground for the complainant's dismissal were it not for reason of sickness which we believe is excusable."[21] On appeal, however, the NLRC categorically declared that private respondent's dismissal was wholly justified because her performance was characterized by inefficiency, infractions and absenteeism.[22] Indeed, the records substantiate the following findings of the NLRC:

> "It was sufficiently established that complainant's absences from November 11, 1990 until December 18, 1990 are unauthorized. She never informed the respondent of her whereabouts which naturally worked to the prejudice to her work. Complainant's assertion that she called-up the respondent by telephone, informing them of state of illness is a bare allegation, unsupported by convincing evidence. This [sic] unauthorized absences left no alternative to the respondent but to seek her explanation on the matter (Rollo, p. 48). Complainant, however did not bother to explain within a reasonable period of time and she only showed-up in the respondent's office on December 19, 1990.

x x x

In this particular, complainant's attitude toward her work is characterized by infractions and inefficiency. It is undisputed that besides her unauthorized absences from November 11, 1990 to December 18, 1990, she previously incurred various offenses. She was frequently late in reporting for work during the following period:

First Quarter of 1984 — 37 times
Second Quarter of 1984 — 45 times
First Quarter of 1985 — 18 times
January 1987 — 8 times
February 1987 — 8 times
March 1987 — 13 times
April 1987 — 6 times
May 1987 — 13 times
June 1987 — 19 times
July 1987 — 11 times
August 1987 — 7 times
October 1987 — 13 times
November 1987 — 17 times
December 1987 — 19 times
January 1988 — 13 times
February 1988 — 15 times
March 1988 — 9 times
April 1988 — 3 times
May 1988 — 10 times
January 1990 — 11 times
March 1990 — 21 times
April 1990 — 16 times
May 1990 — 19 times
June 1990 — 21 times

Evidence likewise disclosed that complainant was absent for 10 days during the month of August 1989 and incurred absences without leave on October 6 and 7, 1989, (Rollo, p. 46 to 47). The foregoing infractions show the unsatisfactory work performance of complainant. In the case of Mendoza vs. NLRC, 196 SCRA 606, the

Supreme Court held that 'the totality of the infractions that petitioner had committed justifies the penalty of dismissal.' Furthermore, complainant was duly informed of the company rules on absences to the fact that a 7th absence within a calendar year constitute habitual unexcused absence. (Rollo, p. 44). Instead however of improving her attendance, complainant continuously ignored the warnings given her by the respondent. This finds support in the findings of the Labor Arbiter when [sic] ruled that:

> 'All that we can see from the parties pleadings is the fact that complainant have (sic) been incurring tardiness and absences and that despite numerous warnings sent to her in fact numbering 16 all in all from 1989 to 1990, she still persist in incurring absences and tardiness. She had not shown enough improvement on her attendance the last of which was her absences incurred from November 30, 1990 to December 19, 1990 without any justification presented relative to the said absences except the reliance to the certification of her attending physician which was dated March 4, 1991 that she was under treatment of the said doctor from 'chronic ashtmatic [sic] bronchitis', covering the period January 19, 1990 to May 28, 1990. While it may be true that complainant was suffering from the alleged sickness, her absences incurred during the period November 30, 1990 up to the time when she reported to explain on December 19, 1990 was not supported by competent proof to rely on.'

Since the dismissal of private respondent was deemed valid, she cannot be entitled to reinstatement and back wages.[23] An award of back wages by the NLRC during the period of appeal is totally inconsistent with its finding of a valid dismissal.

Additionally, private respondent cannot now be granted separation pay or any other affirmative relief previously awarded to her by the labor arbiter but reversed by the NLRC. Since she did not appeal from the NLRC's Resolution, she is presumed to be satisfied with the adjudication therein. This is in accord with the doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision.[24]

WHEREFORE, the petition is hereby **GRANTED**. The award of back wages in the assailed NLRC Resolution dated October 29, 1993 is **DELETED**. The temporary restraining order issued on June 29, 1994 is **MADE PERMANENT**. No costs.

SO ORDERED.

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

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[1] In NLRC NCR CA No. 003258-92; rollo, pp. 26-34.
[2] Second Division composed of Pres. Comm. Edna Bonto-Perez, ponente; Comm. Domingo H. Zapanta and Rogelio I. Rayala, concurring.
[3] Rollo, p. 33.
[4] Rollo, p. 25.
[5] Rollo, pp. 16-19; LA's decision, pp. 1-4.
[6] Rollo, pp. 29-33; Resolution of October 29, 1993, pp. 4-8.
[7] Issued by the First Division.
[8] Rollo, pp. 156-157.
[9] This case was deemed submitted for resolution on April 14, 1997, upon this Court's receipt of private respondent's memorandum.
[10] Rollo, p. 8; Petition, p. 7.
[11] Should be "Resolution."
[12] Rollo, pp. 250-251; Petitioners' Memorandum, pp. 8-9.
[13] Rollo, p. 252; Petitioners' Memorandum, p. 10.
[14] Rollo, pp. 193-194; Solicitor General's Manifestation and Motion in Lieu of Comment, pp. 5-6.
[15] Represented by Atty. Edgardo M. Tamoria (now deceased).
[16] Rollo, p. 223; Respondent NLRC's Comment, p. 5.
[17] Rollo, p. 272; Private Respondent's Memorandum, p. 6.
[18] As amended by Section 12 of RA 6715.
[19] Article 279 of the Labor Code; Gold City Integrated Port Service, Inc. vs. National Labor Relations Commission, 245 SCRA 627, July 6, 1995.
[20] Gold City Integrated Port Service, Inc. vs. National Labor Relations Commission, supra, at pp. 638-639; Torillo vs. Leogardo, 197 SCRA 471, May 27, 1991; Indophil Acrylic Mfg. Corp. vs. NLRC, 226 SCRA 723, September 27, 1993.
[21] Rollo, p. 24; LA's decision, p 9.
[22] Citing Mendoza vs. NLRC, 195 SCRA 606, March 22, 1991.
[23] Lausa vs. National Labor Relations Commission, 187 SCRA 299, July 9, 1990.
[24] SMI Fish Industries vs. National Labor Relations Commission, 213 SCRA 444, September 2, 1992. See also Caliguia vs. National Labor Relations

Commission, 264 SCRA 110, November 13, 1996; Teodoro vs. Court of Appeals, 258 SCRA 603, July 11, 1996; Carrion vs. Court of Appeals, 260 SCRA 862, August 22, 1996.