SUPREME COURT
THIRD DIVISION

HILARIO MAGCALAS, PROSPERO MARINDA, CELSO GAMALO, EPIFANIO OMEGA, VIRGILIO CAMPOS, ANTONIO LLAGAS, BERNARD BENDANILLO, SHALDY AUTENCIO, CIRIACO REYES, JUANITO DE LEON, EDMUNDO GUZMAN, ALFREDO SANTOS, BENEDICTO DAGCUTAN, NORBIE LOPENA, ISMAEL ALONZO, ELMER BALETA, GENITO DALMERO, and CESAR LEDESMA,
***Petitioners*,**

-versus-

G.R. No. 100333
March 13, 1997

NATIONAL LABOR RELATIONS COMMISSION and KOPPEL, INC.,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

May regular employment be restricted to a definite or fixed term? Upon the expiration of such term, may the employment be deemed terminated upon payment of separation pay? The respondent NLRC answered these questions in the affirmative but the labor arbiter held otherwise — that such termination constituted illegal dismissal, thereby entitling the petitioners to reinstatement, backwages and attorney's fees.

This divergence of position between the NLRC and the labor arbiter will now be ruled upon by this Court as it resolves this Petition for *Certiorari* challenging the Decision[1] and Resolution[2] of public respondent[3] promulgated on April 5, 1991, and May 13, 1991, respectively. The Decision of public respondent reversed that of the labor arbiter while the Resolution denied the motion for reconsideration. The dispositive portion of the impugned Decision reads:[4]

> "WHEREFORE, premises considered, the appealed decision is hereby set aside, and a new judgment is entered, ordering the respondent to pay separation pay to herein complainants, as explained above."

On the other hand, the dispositive portion of the reversed decision of the Labor Arbiter[5] reads:[6]

> "WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered, ordering the respondent to reinstate all the individual complainants named in the above entitled case to their former positions without loss of seniority rights and privileges, and to pay them backwages from the time of their dismissal/termination to their actual reinstatement, plus attorney's fee equivalent to Ten Percent (10%) of the total monetary award; the claim for legal interest is dismissed for lack of merit."

The Facts

The facts are set out in the decision of the labor arbiter, as follows:[7]

> "In their basic complaint and counter position paper, the complainants alleged (inter alia) that they were all regular employees of the respondent company, having rendered continuous services in various capacities, ranging from leadman, tinsmith, tradeshelper to general clerk; that the respondent has been engaged in the business of installing air conditioning (should be air-conditioning) and refrigeration equipment in its different projects and jobsites where the complainants have been assigned; that the complainants have worked for a number of years, the minimum of which was one and a half years and the maximum (was) eight years under several supervisors; that on August 30, 1988, they were dismissed (en masse) without prior notice and investigation, and that their dismissals were effected for no other cause than their persistent demands for payment of money claims (as) mandated by law.
>
> On the other hand, the respondents interposed the defense of contract/project employment and averred the following statement of facts in support thereof:
>
> 'The respondent company is engaged in the business of manufacturing and installation of air(-) conditioning and refrigeration equipments (sic).
>
> The manufacturing aspect of its operation is handled by its regular employees, while the installation aspect, by reason of its intermittence, is carried out by its project or contract employees.
>
> The installation of the air(-)conditioning equipment at the Asian Development Bank Building and (the) Interbank building was awarded to the respondent herein. The complainants herein were among the contract employees hired by the respondent to install the air(-) conditioning

equipment at the Asian Development Bank and Interbank projects. Their specific assignments were as follows:

	Name	Position	Project
1.	HILARIO MAGCALAS	Leadman	Asian Dev. Bank
2.	PROSPERO MARINDA	Tinsmith	Asian Dev. Bank
3.	VIRGILIO CAMPOS	Tradeshelper	Asian Dev. Bank
4.	ANTONIO LLAGAS	Tradeshelper	Asian Dev. Bank
5.	BERNARD BENDANILLO	Tradeshelper	Asian Dev. Bank
6.	ISMAEL ALONZO	Tradeshelper	Asian Dev. Bank
7.	SHALDY AUTENCIO	Tradeshelper	Asian Dev. Bank
8.	CIRIACO REYES	Tradeshelper	Interbank
9.	CELSO GAMALO	Tradeshelper	Interbank
10.	EPIFANIO OMEGA	Tradeshelper	Interbank
11.	EDMUNDO GUZMAN	Tradeshelper	Interbank
12.	ALFREDO SANTOS	Tradeshelper	Interbank
13.	JUANITO DE LEON	Tradeshelper	Interbank
14.	BENEDICTO DAGCUTAN	Tradeshelper	Interbank
15.	ELMER BALETA	Tradeshelper	Interbank
16.	GENITO DALMERO	Tradeshelper	Interbank
17.	CESAR LEDESMA	Tinsmith	Interbank
18.	NOR(B)IE LOPENA	General Clerk	Interbank

The aforesaid employees were engaged to work on (sic) the installation projects until August 31, 1988, when their task was expected to be completed. This is evidenced by their respective employment contracts, copies of which are hereto attached as ANNEXES 1 to 18.

With the completion of their task on August 31, 1988 in their respective installation projects, the employment of the complainants (ipso facto) expired as they had no more work to do. They now claim that they were illegally dismissed.'

> Reply by the respondent and rejoinder by the complainants were subsequently filed, after which the case was considered as submitted for Decision based on the pleadings and evidences (sic) on record."

As earlier stated, public respondent reversed the decision of the labor arbiter favorable to herein petitioners. Hence, this petition for *certiorari*.

The Issues

Petitioners raise and argue the following issues in their Memorandum:[8]

> "(a) whether (p)etitioners (were) regular workers under the contemplation of Art. 280 of the Labor Code; and
>
> (b) whether (p)etitioners' termination and/or cessation of their employments on August 30th, (sic) 1988 were justified under the contemplation of Art. 279 of the Labor Code as amended."

Petitioners contend that they were regular employees because "(t)he job of installing an(d)/or repairing its manufactured units and equipments (sic) to its different customers are not merely adjunct but are necessary activities of (p)rivate (r)espondent's daily business operations."[9] They maintain that their employment is regular because of "the nature of the activities (they) performed,"[10] regardless of the stipulation in their job contracts. Petitioners argue that the phrase "specific project or undertaking" in Article 280 of the Labor Code means "special type of venture or undertaking" that is not "usually necessary or desirable in the employer's business operation and activities."[11] Petitioners add that doubts as to their employment status must be resolved in their favor.[12]

The Solicitor General ("Sol. Gen."), invoking the case of Orbos vs. Civil Service Commission,[13] sided with petitioners. He argues that "(t)o say that petitioners (were) regular employees and yet subject to a definite or fixed term is incongruous, inconsistent, or illogical. Indeed, a worker is either regular or casual; (i)f he is employed only

for a specific project or undertaking, then he is considered a casual employee and may be dismissed at the time of the completion of the project."[14] Besides, the "(r)ecords cannot deny that petitioners worked continuously, without a single day of interruption, in not just one, but on the various jobsites assigned to them. Some of them have even worked continuously for eight (8) years, without any stoppage."[15] Even admitting that petitioners were project employees, the Sol. Gen. states that "no iota of proof was ever presented by private respondent to refute petitioners' claim that the ADB and Interbank projects were still in operation when they were terminated or, vice-versa, to support its claim that these projects were already terminated."[16]

On the other hand, private respondent contends that *certiorari* is not proper in this case. "The findings and conclusions of fact and law of the respondent NLRC are supported by substantial evidence and were not arrived at arbitrarily."[17] It adds that "petitioners were project or contract workers who were hired whenever private respondent was able to obtain sub-contracts for the installation of air(-) conditioning and ventilation system or refrigeration equipment in construction or building projects. They were last hired in the Asian Development Bank and Interbank air(-)conditioning and ventilation system projects which were completely turned over in August 1989 and (on) November 13, 1989, respectively. (Please see Annexes '2' and '3' hereof).[18]

Because of the position taken by the Sol. Gen., public respondent filed its own Comment. It argues that "the factual findings of respondent Commission (were) based on substantial evidence and supported by the clear letter of the law as well as pertinent jurisprudence on the matter."[19] Thus, public respondent contends that the petition should be dismissed and the challenged judgment should be upheld as a proper exercise of the powers conferred upon it by law.[20]

Public respondent ruled against petitioners thus:[21]

> "A cursory reading of the Collective Bargaining Agreement between the respondent company and the Koppel Employees Association shows that it recognized Contract Employees as one of the three categories of employees in the Company. Article IV,

> Section 1, of the said Collective Bargaining Agreement defines a 'Contract Employee' as 'one hired on individual employment contract basis to perform work on specific projects or as indicated in his contract of employment. The duration of such employment is determined by and indicated in his contract of employment.' (Record, page 49)

Article 280 of the Labor Code provides:

> "Art. 280. Regular and Casual Employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer except where the employment has been fixed for a specific project or undertaking the completion of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season." (Emphasis supplied)

The above provision is intended for all industries except the construction industry. Policy Instruction No. 20 was precisely promulgated for the reason that the problems of regularity of employment in the construction industry has continued to plague it. The policy implements the exception to Article 280 of the Labor Code. (Magante vs. NLRC, 185 SCRA 21)

Complainant herein were engaged by the respondent to handle the installation of air(-)conditioning and refrigeration equipments (sic) in the construction projects at the Asian Development Bank and Interbank buildings. As the nature and character of their work is necessary or desirable of (sic) the usual business of the respondent, which is to manufacture and install air(-)conditioning and refrigeration equipments (sic) in buildings, complainants' jobs can be categorized as regular workers (should be work) but subject to a definite or fixed term. But their services were not terminated at the end of the project or contract. As the ADB and Interbank projects have been completed, their lay-off has resulted in the termination of

their employment for lack of work; hence, they are entitled to separation pay equivalent to one month pay or one-half month pay for every year of service, whichever is greater, and a fraction of six months or more to be considered as one year.

The Court's Ruling

We find for petitioners.

First Issue: Are Petitioners Regular Workers?

In *certiorari* proceedings under Rule 65, this Court does not, as a rule, evaluate the sufficiency of evidence upon which the labor arbiter and public respondent based their determinations. The inquiry is limited essentially to whether or not said public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion.[22] However, where the findings of the NLRC are contrary to those of the tribunal below, the Court — in the exercise of its equity jurisdiction — may wade into and reevaluate such findings,[23] as in the present instance.

In this case, Public Respondent NLRC did not sufficiently indicate the evidentiary basis for its reversal of the labor arbiter's decision. After citing provisions in the collective bargaining agreement (CBA) concerning contract workers and Policy Instruction No. 20, public respondent correctly stated that petitioners were performing work necessary or desirable in the usual business of private respondent. From this undisputed fact, the NLRC jumped to strange and strained inferences. First, it held that the employment of the petitioners was subject to fixed terms. It then leapt to the non-sequitur conclusion that petitioners were project employees. Going further, it held that they were entitled to separation pay, overlooking that under the very law it invoked, "project employees are not entitled to termination pay."[24] This convolution of facts and law cannot reverse the decision of the labor arbiter which is grounded on documentary evidence submitted by the parties.

Indeed, an examination of the assailed Decision reveals that public respondent failed to back up its conclusions with substantial evidence, or that which a reasonable mind may accept as adequate to justify a conclusion. This quantum of evidence is required to establish a fact in cases before administrative and quasi-judicial bodies.[25]

Thus, a mere provision in the CBA recognizing contract employment does not sufficiently establish that petitioners were ipso facto contractual or project employees. In the same vein, the invocation of Policy No. 20 governing the employment of project employees in the construction industry does not, by itself, automatically classify private respondent as part of the construction industry and entitle it to dismiss petitioners at the end of each project. These facts cannot be presumed; they must be supported by substantial evidence.

On the other hand, private respondent did not even allege, much less did it seek to prove, that petitioners had been hired on a project-to-project basis during the entire length of their employment. Rather, it merely sought to establish that petitioners had been hired to install the air-conditioning equipment at Asian Development Bank and Interbank and that they were legally dismissed upon the conclusion of these projects.

Private respondent did not even traverse, and public respondent did not controvert, the labor arbiter's finding that petitioners were continuously employed without interruption, from the date of their hiring up to the date of their dismissal, in spite of the alleged completion of the so-called projects in which they had been hired.[26] The undisputed finding of the labor arbiter on this continuous employment of petitioners is worth quoting:[27]

> "The record discloses that the complainants worked not only in one special project, either at the Asian Development Bank or the Interbank building, as the evidence of the respondent tends to prove, but also variably in other projects/jobsites contracted by Koppel Incorporated: such as the PNB on Roxas Boulevard, Manila; MIA now NAIA; PICC; and San Miguel Complex on Ortigas Avenue, Pasig, Metro Manila. Some of them, after their tour of duty on these different job-sites, were reassigned to the respondent's plant at Koppel Compound, Para(ñ)aque, Metro

> Manila. as shown by the individual complainants(') affidavits attached to their position paper. A close examination of the record further reveals that the 'special projects' at the Asian Development Bank and Interbank to which the complainants were last assigned by the respondent were still in operation before their alleged termination from employment. Under these factual milieu, we believe that they had been engaged to work and perform activities which were necessary and desirable in the air(-)conditioning and refrigeration installation/repair business of the respondent employer, especially where, as in this case, the very nature of such, trade indicates that it can hardly fall under the exception of Policy Instruction No. 20 which applies only to the construction industry. For this reason, and considering that the facts narrated in the complainants(') sworn statements were neither disputed nor refuted by contrary evidence by the respondent, it becomes apparent and increasing(ly) clear that indeed they would and ought to be classified as regular employees." (Emphasis supplied.)

Petitioners were hired on different dates. Some of them worked for eight (8) years, while others for only one and a half (1 ½) years. Private respondent, on the other hand, insisted that petitioners were hired on per project basis. Private respondent, however, did not present any evidence to show the termination of the employment contracts at the end of each project. Only before public respondent and in this petition did private respondent allege, through a photocopy of an affidavit[28] of Mr. Jose Lecaros, the General Manager of Koppel, Inc., that the Asian Development Bank and the Interbank projects had been completed. This affidavit as well as the other annexes[29] cannot be given weight in this petition because this Court is not a trier of facts. In any case, private respondent had not proved, by the said affidavit, that the termination of each project had invariably resulted in the dismissal of its alleged project employees.

Regular employees cannot at the same time be project employees. Article 280 of the Labor Code states that regular employees are those whose work is necessary or desirable to the usual business of the employer. The two exceptions following the general description of regular employees refer to either project or seasonal employees. It has

been ruled in the case of ALU-TUCP vs. National Labor Relations Commission that:[30]

> "In the realm of business and industry, we note, that 'project' could refer to one or the other of at least two (2) distinguishable types of activities. Firstly, a project could refer to particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company. Such job or undertaking begins and ends at determined or determinable times. The typical example of this first type of project is a particular construction job or project of a construction company. A construction company ordinarily carries out two or more discrete (should be distinct) identifiable construction projects: e.g., a twenty-five-storey hotel in Makati; a residential condominium building in Baguio City; and a domestic air terminal in Iloilo City. Employees who are hired for the carrying out of one of these separate projects, the scope and duration of which has been determined and made known to the employees at the time of employment, are properly treated as 'project employees,' and their services may be lawfully terminated at completion of the project." (Emphasis supplied).

The employment of seasonal employees, on the other hand, legally ends upon completion of the project or the season, thus:[31]

> "Clearly, therefore, petitioners being project employees, or to use the correct term, seasonal employees, their employment legally ends upon completion of the project or the season. The termination of their employment cannot and should not constitute an illegal dismissal."

In terms of terminating employment, this Court has already distinguished project from regular employees, to wit:[32]

> "The basic issue is thus whether or not petitioners are properly characterized as 'project employees' rather than 'regular employees' of NSC. This issue relates, of course, to an important consequence: the services of project employees are co-terminus with the project and may be terminated upon the end or

> completion of the project for which they were hired.[33] Regular employees, in contrast, are legally entitled to remain in the service of their employer until that service is terminated by one or another of the recognized modes of termination of service under the Labor Code."[34]

The overwhelming fact of petitioners' continuous employment as found by the labor arbiter ineludibly shows that the petitioners were regular employees. On the other hand, we find that substantial evidence, applicable laws and jurisprudence do not support the ruling in the assailed Decision that petitioners were project employees. The Court here reiterates the rule that all doubts, uncertainties, ambiguities and insufficiencies should be resolved in favor of labor. It is a well-entrenched doctrine that in illegal dismissal cases, the employer has the burden of proof. This burden was not discharged in the present case.

Second Issue: Is Ground for Dismissal Valid?

As regular employees, petitioners' employment cannot be terminated at the whim of the employer. For a dismissal of an employee to be valid, two requisites must be met: (1) the employee is afforded due process, meaning, he is given notice of the cause of his dismissal and an adequate opportunity to be heard and to defend himself; and (2) the dismissal is for valid cause as indicated in Article 282[35] of the Labor Code.[36] The services of petitioners were purportedly terminated at the end of the ADB and Interbank projects, but this could not have been a valid cause for, as discussed above, they were regular and not project employees. Thus, the Court does not hesitate to conclude that petitioners were illegally dismissed.

As a consequence of their illegal termination, petitioners are entitled to reinstatement and backwages in accordance with the Labor Code. The backwages however are to be computed only for three years from August 30, 1988, the date of their dismissal, without deduction or qualification. Where the illegal dismissal transpired before the effectivity of RA 6715,[37] or before March 21, 1989, the award of backwages in favor of the dismissed employees is limited to three (3) years without deduction or qualification.[38]

WHEREFORE, premises considered, the Petition is **GRANTED**. The assailed Decision and Resolution are **REVERSED** and **SET ASIDE** and the Decision of the Labor Arbiter is **REINSTATED**, with backwages to be computed as above discussed. No costs.

SO ORDERED.

Narvasa, *C.J.*, Davide, Jr., Melo and Francisco, *JJ.*, concur.

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[1] Rollo, pp. 18-27.
[2] Ibid., p. 28.
[3] Second Division, composed of Commissioner Rustico L. Diokno, ponente, and Presiding Commissioner Edna Bonto-Perez and Commissioner Domingo H. 4 Zapanta, concurring.
[4] Rollo, p. 26.
[5] Labor Arbiter Dominador M. Cruz.
[6] Rollo, pp. 152-153.
[7] Ibid., pp. 148-150.
[8] Ibid., p. 301.
[9] Ibid., p. 307.
[10] Ibid., pp. 310-311.
[11] Ibid., p. 312.
[12] Ibid., p. 314, citing Article 4 of the Labor Code and Article 1702 of the Civil Code.
[13] 189 SCRA 459, 466, September 12, 1990. In that case this Court ruled that: "In the discharge of this task (specified in Section 1 of PD No. 478) the Solicitor General must see to it that the best interest of the government is upheld within the limits set by law. When confronted with a situation where one government office takes an adverse position against another government agency, as in this case, the Solicitor General should not refrain from performing his duty as the lawyer of the government. It is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position.[Ramos vs. Patricia Sto. Tomas, et al., G.R. No. 83067, March 22, 1990; and Tan, Jr. vs. Gallardo, 73 SCRA 306(1976)] In such an instance the government office adversely affected by the position taken by the Solicitor General, if it still believes in the merit of its case, may appear in its own behalf through its legal personnel or representative."
[14] Rollo, pp. 217-218
[15] Ibid., pp. 218-219.
[16] Ibid., p. 221.
[17] Ibid., p. 357.
[18] Ibid., p. 359.

[19] Ibid., p. 271; original text in upper case.
[20] Ibid., p. 278, citing Leoncito Pacaña vs. NLRC and Philippine Packing Corporation, 172 SCRA 473, 475, April 18, 1989.
[21] Ibid., pp. 24-26.
[22] Ilocos Sur Electric Cooperative, Inc. vs. NLRC, 241 SCRA 36, 50, February 1, 1995, citing Bustamante, Jr. vs. NLRC, 195 SCRA 710, April 8, 1991; Aguilar vs. Tan, 31 SCRA 205, January 30, 1970; Pacis vs. Averia, 18 SCRA 907, November 29, 1966.
[23] Raycor Aircontrol Systems, Inc. vs. National Labor Relations Commission, G.R. No. 114290, September 9, 1996.
[24] Policy Instruction No. 20 (series of 1977), entitled "Stabilizing Employer-Employee Relations in the Construction Industry," provides:

"In the interest of stabilizing employer-employee relations in the construction industry and taking into consideration its unique characteristics, the following policy instructions are hereby issued for the guidance of all concerned:

Generally, there are two types of employees in the construction industry, namely: 1) Project employees, and 2) Non-Project employees.

Project employees are those employed in connection with a particular construction project. Non-project employees are those employed by a construction company without reference to any particular project.

Project employees are not entitled to termination pay if they are terminated as a result of the completion of the project or any phase thereof in which they are employed. regardless of the number of projects in which they have been employed by a particular construction company. Moreover, the company is not required to obtain a clearance from the Secretary of Labor in connection with such termination. What is required of the company is a report to the nearest Public Employment Office for statistical purposes.

If a construction project or any phase thereof has a duration of more than one year and a Project employee is allowed to be employed therein for at least one year, such employee may not be terminated until the completion of the project or of any phase thereof in which he is employed with a previous written clearance from the Secretary of Labor. If such an employee is terminated without a clearance from the Secretary of Labor, he shall be entitled to reinstatement with backwages.

The employees of a particular project are not terminated at the same time. Some phases of the project are completed ahead of others. For this reason, the completion of a phase of the Project is the completion of the project for an employee employed in such phase. In other words, employees terminated upon the completion of their phase of the project are not entitled to separation pay and exempt from the clearance requirement.

On the other hand, those employed in particular phase of a construction project are also not terminated at the same time. Normally, less and less employees are required as the phase draws closer to completion. Project employees terminated because their services are no longer needed in their particular phase of the project are not entitled to separation pay and are

exempt from the clearance requirement, provided they are not replaced. If they are they shall be entitled to reinstatement with backwages.

. . ." (Emphasis supplied)

Policy Instruction No. 20 was subsequently superseded by Department Order No. 19 (series of 1993) dated April 1, 1993, of the Department of Labor and Employment.

[25] Reno Foods, Inc. vs. National Labor Relations Commission, 249 SCRA 379, 385, October 18, 1995, citing Section 5, Rule 133 of the Rules of Court and the case of Manila Electric Company vs. NLRC, 198 SCRA 681, 686, July 2, 1991.

[26] In their Memorandum, petitioners listed their lengths of service (which are not disputed by private respondent), to wit: (Rollo, p. 302)

"NAMES	LENGTH OF SERVICES
1) Juanito de Leon	8 years
2) Ciriaco Reyes	8 years
3) Edmundo de Guzman	8 years
4) Alfredo Santos	8 years
5) Bernard Bendanillo	7 years
6) Epifanio Omega	6 years
7) Norbie Lopana (sic)	6 years
8) Ismael Alonzo	6 years
9) Hilario Magcalas	6 years
10) Celso Gamalo	5 years
11) Virgilio Ocampo (sic)	5 years
12) Shaldy Autencio	5 years
13) Antonio Llagas	4 years
14) Prospero Miranda	4 years
15) Benedicto Dagcutan	4 years
16) Elmero (sic) Baleta	1 ½ years
17) Juanito Dalmero	1 ½ years
18) Cesar Ledesma	1 ½ years"

[27] Rollo, pp. 151-152.

[28] Rollo, pp. 368-369.

[29] Photocopies of Contractor's License of private respondent and of the turn-over letter of Project Manager Leonardo C. Pablo to International Corporate Bank. (Rollo, pp. 367-370).

[30] 234 SCRA 678, 685, August 2, 1994, cited in Raycor Aircontrol Systems, Inc. vs. National Labor Relations Commission, supra.

[31] Mercado, Sr. vs. NLRC, 201 SCRA 332, 343, September 5, 1991.

[32] Supra at p. 684.

[33] Citing Beta Electric Corporation vs. National Labor Relations Commission, 182 SCRA 384, February 15, 1990; Cartagenas vs. Romago Electric Co., Inc., 177 SCRA 637, September 15, 1989; Sandoval Shipyards, Inc. vs. National Labor Relations Commission, 136 SCRA 674, May 31, 1985.

[34] Citing Articles 281-286 of the Labor Code as amended.

[35] Article 282. Termination by Employer. — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[36] Pizza Hut/Progressive Development Corp. vs. NLRC, 252 SCRA 531, January 29, 1996.

[37] In Bustamante, et al., vs. National Labor Relations Commission, et al., G.R. No. 111651, November 28, 1996, this Court resolved to abandon the doctrine of deducting from backwages the earnings derived from elsewhere of an employee during the period of his dismissal, to wit:

"The Court deems it appropriate, however, to reconsider such earlier ruling on the computation of backwages as enunciated in said Pines City Educational Center case, by now holding that conformably with the evident legislative intent as expressed in Rep. Act No. 6715, above-quoted, backwages to be awarded to an illegally dismissed employee, should not, as a general rule, be diminished or reduced by the earnings derived by him elsewhere during the period of his illegal dismissal. The underlying reason for this ruling is that the employee, while litigating the legality (illegality) of his dismissal, must still earn a living to support himself and family, while full backwages have to be paid by the employer as part of the price or penalty he has to pay for illegally dismissing his employee. 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. In other words, the provision calling for "full backwages" to illegally dismissed employees is clear, plain and free from ambiguity and, therefore, must be applied without attempted or strained interpretation, Index animi sermo est." (Citations omitted).

[38] Minion, Jr. vs. National Labor Relations Commission, 239 SCRA 451, 459, December 27, 1994.